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APPENDIX

Supreme Court, U.S.
FILED
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70-128

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ~~1600~~

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MARTIN DIES, JR., ET AL.,
*Appellants*

vs.

VAN PHILLIP CARTER, ET AL.,
*Appellees*

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On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

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FILED APRIL 21, 1971
JURISDICTION NOTED JUNE 7, 1971

# INDEX


| | Page |
|---|---|
| DOCKET ENTRIES (CA-3-3739) (Pate) | 2 |
| DOCKET ENTRIES (CA-3-3733) (Wischkaemper) | 4 |
| DOCKET ENTRIES (CA-3-3635) (Carter) | 6 |
| PLAINTIFF'S ORIGINAL PETITION (Carter) | 9 |
| SECOND AMENDED ORIGINAL THREE-JUDGE APPLICATION AND COMPLAINT (Pate) | 11 |
| PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION (Wischkaemper) | 34 |
| PLEA OF INTERVENTION (Jenkins) | 41 |
| MOTION FOR CONSOLIDATION OF ACTIONS, MOTION TO INTERVENE AS A PLAINTIFF, OR CLASS PLAINTIFF, MOTION TO EXPEDITE AND FOR TEMPORARY ORDERS | 49 |
| MOTION FOR LEAVE TO INTERVENE (Guzman, et al.) | 83 |
| STIPULATION OF FACTS (April 2, 1970) | 95 |
| ORDER (On Preliminary Relief—April 3, 1970) | 105 |
| STIPULATION OF FACT (August 27, 1970) | 109 |
| STIPULATION OF FACT (October 9, 1970) | 140 |
| STIPULATION OF FACT (October 19, 1970) | 142 |
| OPINION | 145 |
| JUDGMENT | 160 |
| NOTICE OF APPEAL | 162 |

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

VAN PHILLIP CARTER

vs.

MARTIN DIES, JR., AND
DR. ELMER C. BAUM

CA 3-3744-C — 3733-C

THEODORE H. WISCHKAEMPER,
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED

vs.

ROBERT L. WRIGHT, CHAIRMAN OF THE
TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL.

REUBIN JENKINS, INTERVENOR

CA 3-3739-C

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED

vs.

GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS,
AND INDIVIDUALLY, AND THE COUNTY DEM-
OCRATIC EXECUTIVE COMMITTEE OF EL
PASO COUNTY, TEXAS, AND THE PRIMARY
COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L.
SIFUENTES, AND MANUEL SAPIEN, ON BE-

HALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED, AND AS MEMBERS OF U.N.I.O.N., INCORPORATED, INTERVENORS

CIVIL DOCKET
UNITED STATES DISTRICT COURT
THREE JUDGE COURT
JUDGE TAYLOR, JUDGE HUGHES, JUDGE THORNBERRY

CA-3-3739

Jury demand date:

WILLIAM PATE, on behalf of himself and all others similarly situated
vs.
GEORGE A. McALMON, JR., as Chairman of the County Democratic Executive Committee of El Paso County, Texas, and individually, and the County Democratic Executive Committee of El Paso County, Texas, and the Primary Committee

ATTORNEYS

For plaintiff:
Joseph A. Calamia
John L. Fashing
Calamia & Fashing
608 Southwest National Bank Bldg.
El Paso, Texas 79901

For defendant:
Mark F. Howell
508 Southwest National Bank Bldg.
El Paso, Texas 79901

For Governor & Atty. Gen.:
William J. Craig
Assistant Attorney General
Box R, Capitol Station
Austin, Texas 78711

| DATE | PROCEEDINGS |
|---|---|
| 1-14-70 | 1) Filed Original Three Judge Application and Complaint, in dup. |
| 1-16-70 | Issued summons and copy to George A. McAlmon, Jr., as Chairman Democratic Ex. Committee of El Paso Co., Texas |
| 2-12-70 | 2) Filed Defendants' Original Answer, in dup. |
| 2-17-70 | 3) Filed First Amended Original Three Judge Application and Complaint, and Order Granting leave to file, in dup. |
| 3- 3-70 | 4) Filed Copy of designation and composition of the three-judge court—Honorable Ernest Guinn, Honorable D. W. Suttle, and Honorable Homer Thornberry |
| 3- 5-70 | 5) Filed Plaintiffs' Motion to Set Hearing, in dup. |
| 3- 5-70 | 6) Filed Brief in Support of Plaintiffs' Motion to Set Hearing, in dup. |
| 3-13-70 | 7) Filed Stipulation for Amendment of Complaint, in quad. |
| 3-13-70 | 8) Filed Second Amended Original Three Judge Application and Complaint, in quad. (Copies furnished Judges 3-13-70) |
| 3-16-70 | Issued summonses and copies to Preston Smith, as Governor of State of Texas; Crawford Martin as Attorney General of State of Texas; and Martin Dies, Jr., as Secretary of State of State of Texas. |
| 3-16-70 | 9) Filed Stipulation for Amendment to Complaint and Motions to Intervene and Consolidate Actions, in quad. (Copies furnished Judges 3-17-70). |
| 3-16-70 | 10) Filed Motion for Consolidation of Above Actions; Motion to Intervene as a Plaintiff or Class Plaintiff; Motion to Expedite and for Temporary Orders, in quad. (Copies furnished Judges 3-17-70). |
| 3-16-70 | 11) Filed Brief in Support of Motion for Consolidation of above |

Actions; Motion to Intervene as a Plaintiff or Class Plaintiff; Motion to Expedite and for Temporary Orders, in quad. (Copies furnished Judges 3-17-70).

3-17-70 12) Filed Motion for Leave to Intervene—Carlos Guzman et al.—in quad. (Copies furnished Judges 3-17-70).

3-17-70 13) Filed Brief in Support of Motion for Leave to Intervene, in quad. (Copies furnished Judges 3-17-70).

3-19-70 14) Filed Defendants' Memorandum of Authorities of Defendant, in quad. (Copies furnished Judges 3-20-70).

3-19-70 15) Filed Memorandum Brief filed at the Request of the Court (Pltfs.) (Copies furnished Judges 3-24-70).

3-24-70 16) Filed Ret. Summons to Geo. A. McAlmon, Jr., as Chairman of the County Democratic Ex. Committee of El Paso Co., Tex. and individually. Ex. 1-22-70 at El Paso, Tex.

3-24-70 17) Filed Ret. Summons to Preston Smith, as Governor of the State of Texas. Ex. 3-20-70 at Austin, Tex.

3-24-70 18) Filed Ret. Summons to Crawford Martin, as Atty. Gen. of the State of Tex. Ex. 3-20-70 at Austin, Tex.

3-24-70 19) Filed Order transferring case to the Northern Dist. of Tex., in dup. (Copies furnished Judges by Judge Thornberry 3-24-70).

3-25-70 20) Filed Brief in Support of Plaintiff Intervenor's Proposed Complaint, in quad (Copies furnished Judges 3-25-70).

3-26-70 21) Filed Order entered by John R. Brown, Chief Judge, U. S. Court of Appeals for the Fifth Circuit, taking notice of transfer of this cause to the Northern District of Texas and reconstituting the Court. (Copies furnished Judges by Judge Brown 3-24-70).

3-27-70 22) Received file from Western District of Texas, El Paso.

3-25-70 23) Filed ORDER setting hearing before 3-Judge Court on April 3 1970, at 10.00 A.M. (Copies mailed to El Paso attorneys by certified mail.)

4- 2-70 24) Filed 4 AFFIDAVITS. (Manuel Sapien, Luz A. Lozano, Carlos Guzman and Andres L. Sifuentes).

4- 2-70 25) Filed STIPULATION OF FACTS concerning intervenors.

4- 3-70 26) Filed SUPPLEMENT MEMORANDUM OF AUTHORITIES OF DEFENDANT, GEORGE McALMON, JR.

4- 3-70 27) Filed ORDER on motions for preliminary injunction. Relief denied as to plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments. (Relief granted in CA-3-3733 and CA-3-3739 as to Wischkaemper and Pate, individually and apart from any class they represent; Relieved from payment of challenged filing fees until Court passes on all questions raised, etc.) Judges Thornberry and Hughes concurring; Judge Taylor dissenting Copies of Order distributed at Clerks office 4-3-70.

4- 9-70 28) Filed DEFENDANTS' ORIGINAL ANSWER.

4-15-70 29) Pre-trial notice mailed to counsel. (Copy of Order entered 4-3-70 mailed to Atty. Gen. William Craig.) Pre-trial set 7-10-70 @ 9 A.M.

8-24-70 30) Filed STIPULATION OF FACT in CA3-3635-C; CA3-3733-C; CA3-3739-C (Placed in file of CA3-3635-C).

9- 8-70 31) Filed PLAINTIFF INTERVENOR'S BRIEF (placed in file of CA3-3635-C). Mailed copy to Judge Thornberry; copy for Judge Hughes.

9-10-70 32) Filed PLAINTIFF & INTERVENOR'S BRIEF (Wischkaemper & Jenkins). CA3-3733. Copies furnished Judges Thornberry & Hughes.

9-11-70 33) Filed PLAINTIFF PATE'S BRIEF in CA3-3739. (Copies furnished Judges.)

9-29-70 34) Filed MEMORANDUM OF AUTHORITIES OF DEFENDANT. (placed in CA3-3635-C).

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| 10-23-70 | 35) | Filed DEFENDANTS' TRIAL BRIEF (State of Texas & Dr. Tomme) In CA3-3635. |
| 10- 5-70 | 36) | Filed STATEMENT OF CHARLES F. HERRING, ATTY. FOR DR. ELMER C. BAUM, adopting Trial Brief of Atty. Gen. of Texas. |
| 10- 9-70 | 37) | Filed STIPULATION OF FACT re salaries of state officers. |
| 10- 9-70 | 38) | Filed STIPULATION OF FACT re records of Co. Clerk of Tarrant County, Texas, concerning run-off primaries held in Demo. Primary in June in listed ofcs. during yrs. 1958-68. |
| 10- 9-70 | 39) | Filed REPLY BRIEF OF PTF. WISCHKAEMPER AND INTERVENOR JENKINS. |
| 12-21-70 | 40) | Filed OPINION of 3-Judge Court. |
| 12-31-70 | 41) | Filed JUDGE THORNBERRY'S CONCURRING OPINION. |
| 12-21-70 | 42) | Filed ORDER that Texas Election Code Ann. Arts 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967) are declared to be on-constitutional because they infringe upon First Amendment rights w/o any compelling justification in violation of the 1st & 14th Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967).<br>Copies of ORDER and OPINION mailed by Judge Taylor's office to all counsel. |

CIVIL DOCKET
UNITED STATES DISTRICT COURT
THREE JUDGE COURT
JUDGE TAYLOR, JUDGE HUGHES, JUDGE THORNBERRY

Jury demand date:

CA-3-3733

| TITLE OF CASE | ATTORNEYS |
|---|---|
| THEODORE H. WISCHKAEMPER ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED<br>REUBIN JENKINS, INTERVENOR<br>vs.<br>ROBERT L. WRIGHT, CHAIRMAN OF THE TARRANT COUNTY DEMOCRATIC EXECUTIVE COMMITTEE | For plaintiff:<br>Theodore H. Wischkaemper<br>ATTY: A. L. CROUCH<br>908 E. Butler St.<br>Ft. Worth, Texas 76110<br>For Intervenor:<br>A. L. Crouch<br>109 N. Taylor<br>Ft. Worth<br>For defendant:<br>For Robt. L. Wright: Stone, Tilley, Parker, Snakard, Law & Brown<br>1500 Ft. Worth Natl. Bank Bldg.<br>Ft. Worth, Texas 76102<br>By: Thos. H. Law &<br>Robt. K. Ro<br>For Dr. Tomme:<br>Estil Vance, Jr.<br>Cantey, Hanger, Gooch, Cravens & Mu<br>1800 First National Building<br>Fort Worth, Texas 76102<br>For Atty. Gen. & Governor:<br>William J. Craig, Assistant Atty. Gen., Box R, Capitol Station, Austin 78711 |

| DATE | PROCEEDINGS |
|---|---|
| 3-25-70 | 1) Received the following papers by order of transfer from Ft. Worth Div.<br>12-15-69: Filed Complaint.<br>12-15-69: Summons issued.<br>12-17-69: Marshal's return. Robert L. Wright served 12-17-69.<br>1- 6-70: Filed Deft's MOTION TO DISMISS, and SUBJECT THERETO, ANSWER.<br>1-13-70: Ptf's First Amended Petition.<br>1-13-70: Motion (to substitute deft.).<br>2- 7-70: Notice of Motion by Ptf. to amend complaint by dismissing & adding Deft's Third original amended petition.<br>2-13-70: Motion to bring in new deft.<br>3-13-70: Plea in Intervention of Reubin Jenkins.<br>3-13-70: Ptf's Third Amended Original Petition.<br>3-13-70: Order—per oral order of the court in this cause at the hearing of 3-13-70—No. 34055C—Edward J. Greene vs. A. L. Crouch, in the Dist. Court of Tarrant County., Texas, 153rd Judicial Dist., dtd April 8, 1964.<br>3-16-70: Filed ORDER GRANTING LEAVE TO FILE PLEA IN INTERVENTION OF REUBIN JENKINS.<br>3-25-70: Issued Summons on 3rd Amended Petition, to Preston Smith; Attorney General; Dr. J. D. Tomme, Jr.<br>3-25-70: ORDER transferring to Dallas Division. |
| 3-25-70 | 2) Filed Ptf's MOTION FOR PRELIMINARY INJUNCTION. |
| 3-25-70 | 3) Filed Ptf's MOTION TO DISQUALIFY JUDGE. |
| 3-25-70 | 4) Filed Ptf's MOTION FOR PERSONAL SERVICE. (See above—summons has been issued.) |
| 3-25-70 | 5) Filed Ptf's APPLICATION FOR THREE-JUDGE COURT. |
| 3-25-70 | 6) Filed ORDER SETTING THREE JUDGE HEARING FOR 4-3-70, 10 A.M. (This order was served with the summons, to Preston Smith; to Atty. General; to Dr. J. D. Tomme, Jr.) |
| 3-27-70 | 7) Filed DESIGNATION by John R. Brown, Circuit Judge of the following three-judge panel: W. M. Taylor, JR., SARAH T. HUGHES, HOMER THORNBERRY. |
| 3-27-70 | 8) Filed RETURN ON SUMMONS executed 3-26-70 by serving Dr. J. D. Tomme, Jr., in person; serving J. D. Tomme, Jr. as Chairman of the Tarrant Co. Democratic Exec. Comm., Ft. Worth, Tex. (MD-19946). |
| 4- 2-70 | 9) Filed RETURN ON SUMMONS executed 3-30-70 by serving Preston Smith, Governor of Texas by delivering to Bob Glasgow, agent. (MD-19946). |
| 4- 3-70 | 10) Filed ANSWER OF DR. J. D. TOMME, JR. |
| 4- 3-70 | 11) Filed RETURN ON SUBPOENA DUCES TECUM executed 4-1-70 by serving Dr. J. D. Tomme, Jr. |
| 4- 3-70 | 12) Filed ORDER on motions for preliminary injunction. Relief denied as to plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments. (Relief granted in CA-3-3733 and CA-3-3739 as to Wischkaemper and Pate, individually and apart from any class they represent; relieved from payment of challenged filing fees until Court passes on all questions raised, etc.). Judges Thornberry and Hughes concurring; Judge Taylor dissenting.<br>Copies of Order distributed at Clerk's office 4-3-70. |
| 4- 9-70 | 13) Filed DEFENDANTS' ORIGINAL ANSWER. |
| 4-10-70 | 14) Filed Return on Summons executed 3-27-70 by serving Crawford Martin by delivering to Alfred Walker, agent for the Texas State Attny Gen., Austin, Tex. (MD-19946). |
| 4-15-70 | 15) Pre-trial notice mailed to counsel; also mailed Wm. J. Craig a copy of the Order entered 4-3-70. (Pre-trial set 7-10-70 @ 9 A.M.). |

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|---|---|
| 4-27-70 | 16) Filed ANSWER OF DR. J. D. TOMME, JR. TO PLEA OF INTERVENTION OF REUBIN JENKINS. |
| 8-24-70 | 17) Filed STIPULATION OF FACT IN CA3-3635-C; CA3-3733-C; CA3-3739-C (placed in file of CA3-3635-C). |
| 9- 8-70 | 18) Filed PLAINTIFF INTERVENOR'S BRIEF (placed in file of CA3-3635-C). Copy mailed to Judge Thornberry; copy for Judge Hughes. |
| 9-10-70 | 19) Filed PLAINTIFF & INTERVENORS BRIEF (Wischkaemper & Jenkins). Copies furnished Judges. (CA3-3635.) CA-3-3635. |
| 9-11-70 | 20) Filed PLAINTIFF PATE'S BRIEF in CA3-3739. (Original in CA-3-3635.) |
| 9-29-70 | 21) Filed MEMORANDUM OF AUTHORITIES OF DEFENDANT (placed in CA3-3635-C). |
| 10- 2-70 | 22) Filed DEFENDANTS' TRIAL BRIEF (State of Texas & Dr. Tomme) placed in CA-3-3635. |
| 10- 5-70 | 23) Filed STATEMENT OF CHARLES F. HERRING, ATTY. FOR DR. ELMER C. BAUM, adopting Trial Brief of the Atty. Gen. of Texas (placed in CA-3-3635). |
| 10- 9-70 | 24) Filed STIPULATION OF FACT re salaries of state officers (placed in CA-3-3635). |
| 10- 9-70 | 25) Filed STIPULATION OF FACT re Tarrant County Clerk's records concerning run-off primaries held in Demo- Primary in June in listed ofcs. during years 1958-69. |
| 10- 9-70 | 26) Filed REPLY BRIEF OF PLAINTIFF WISCHKAEMPER & INTERVENOR JENKINS (CA-3-3635). |
| 12-21-70 | 27) Filed OPINION OF 3-Judge Court.<br>Filed JUDGE TORNHBERRY'S CONCURRING OPINION. |
| 12-21-70 | 28) Filed ORDER that Texas Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967) are declared to be unconstitutional, because they infringe upon First Amendment rights w/o any compelling justification in violation of the 1st & 14th Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967).<br>Copies of ORDER and OPINION mailed by Judge Taylor's office to all counsel. |

CIVIL DOCKET
UNITED STATES DISTRICT COURT
THREE JUDGE COURT
(THORNBERRY, HUGHES, TAYLOR) CA-3-3635
Jury demand date:

VAN PHILLIP CARTER
vs.
MARTIN DIES JR. and
DR. ELMER C. BAUM

ATTORNEYS

For plaintiff:
H. Averil Sweitzer
Fifth Floor, Manor House
1222 Commerce
Dallas, Texas 75202 747-2845

For Defendant:

For Baum:
Charles F. Herring
Small, Herring, Craig, Werkenthin & Shannon
900 Perry Brooks Bldg.
Austin, Texas 78701
512/472-8355

For Martin Dies, Jr.
Crawford C. Martin
Attorney General of Texas
Capitol Station
Austin, Texas 78711
William J. Craig, Assistant

| DATE | PROCEEDINGS |
|---|---|
| 2- 6-70 | 1) Filed PLAINTIFF'S ORIGINAL PETITION and issued SUMMONSES (2). |
| 3- 4-70 | 2) Filed Ptf's MOTION FOR UNDER RULE 81(b) directing U.S. Marshal to serve defts. within 48 hours. |
| 3- 4-70 | 3) Filed ANSWER OF DEFENDANT ELMER C. BAUM. |
| 3- 9-70 | 4) Filed RETURN ON SUMMONS executed 2-20-70 by serving Martin Dies, Jr. and Dr. Elmer C. Baum at Austin, Tex. (MD-19815) |
| 3-11-70 | 5) Filed DEFENDANT'S ORIGINAL ANSWER (Martin Dies, Jr.). |
| 3-13-70 | 6) Filed APPLICATION FOR THREE-JUDGE COURT. |
| 3-13-70 | 7) Filed MOTION FOR PRELIMINARY INJUNCTION. |
| 3-13-70 | 8) Filed CERTIFICATE OF SERVICE for application and motion. |
| 3-25-70 | 9) Filed ORDER SETTING 3-JUDGE HEARING FOR 4-3-70, 10 A.M. |
| 3-27-70 | 10) Filed DESIGNATION by John R. Brown, Chief Judge of 5th Circuit, designating the following 3-Judge panel: Homer Thornberry, Sarah T. Hughes, and W. M. Taylor, Jr. (parties & Atty. General notified by Judge Taylor's law clerk). |
| 4- 3-70 | 11) Filed ORDER on motions for preliminary injunction. Relief denied as to plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments. (Relief granted in CA 3-3733 and CA 3-3739 as to Wischkaemper and Pate, individually and apart from any class they represent: relieved from payment of challenged filing fees until Court passes on all questions raised, etc.) Judges Thornberry and Hughes concurring; Judge Taylor dissenting.<br>Copies of Order distributed at Clerk's office 4-3-70. |
| 4- 6-70 | 12) Filed MOTION TO DISMISS on behalf of Dr. Elmer C. Baum. (Mailed copy to Judge Thornberry; sent copy to Judge Hughes.)<br>(Certificate of Service on Defendants' Original Answer re Pate & intervenors, Wischkaemper & Jenkins, reflects that a copy of same was sent to plaintiff's counsel in this case.) |
| 8-24-70 | 13) Filed STIPULATION OF FACT in CA 3-3635-C; CA 3-3733-C; CA 3-3739-C (placed in file of CA 3-3635-C). |
| 9- 8-70 | 14) Filed PLAINTIFF INTERVENOR'S BRIEF (placed in file of CA 3-3635-C). Sent copies to Judges Thornberry and Hughes. |
| 9-10-70 | 15) Filed PLAINTIFF & INTERVENOR'S BRIEF—Wischkaemper & Jenkins in CA 3-3733. |
| 9-11-70 | 16) Filed PLAINTIFF PATE'S BRIEF in CA 3-3739. Copies furnished Judges. |
| 9-29-70 | 17) Filed MEMORANDUM OF AUTHORITIES OF DEFENDANT (placed in CA 3-3635-C). |
| 10- 2-70 | 18) Filed DEFENDANTS' TRIAL BRIEF (State of Texas & Dr. Tomme). |
| 10- 5-70 | 19) Filed STATEMENT OF CHARLES F. HERRING, ATTY FOR DR. ELMER C. BAUM, adopting Trial Brief of the Atty Gen. of Texas. |
| 10- 9-70 | 20) Filed STIPULATION OF FACT re salaries of state officers. (Copies furnished Court.) |
| 10- 9-70 | 21) Filed STIPULATION OF FACT re records of County Clerk of Tarrant County, Texas, concerning run-off primaries held in the Democratic Primary in June in listed offices during years 1958-68. |

| | | |
|---|---|---|
| 10- 9-70 | 22) | Filed REPLY BRIEF OF PLAINTIFF WISCHKAEMPER AND INTERVENOR JENKINS (copies furnished Court). |
| 10-10-70 | 23) | Mailed Judge Thornberry a copy of Stipulation of Fact re Tarrant Co. records; placed copy in box for Judge Hughes. |
| 12-21-70 | 24) | Filed OPINION of 3-Judge Court.<br>Filed JUDGE THORNBERRY'S CONCURRING OPINION. |
| 12-21-70 | 25) | Filed ORDER that Texas Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are declared to be unconstitutional because they infringe upon First Amendment rights w/o any compelling justification in violation of the 1st & 14th Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967).<br>Copies of ORDER and OPINION mailed by Judge Taylor's office to all counsel. |
| 2-19-71 | 26) | Filed NOTICE OF APPEAL by State of Texas. |

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION CA-3-3635-C

(Title Omitted in printing)

## PLAINTIFF'S ORIGINAL PETITION

Now comes Van Phillip Carter, Hereinafter called Plaintiff petitioning for relief from the acts of Martin Dies Jr., Secretary of State of Texas and the State Chairman of the Democratic Party of Texas and petitions for relief as set out in Plaintiff's Prayer on the following grounds:

I.

Plaintiff is a resident of Dallas County, Texas. Defendant, Martin Dies Jr., is the duly appointed Secretary of State of Texas. Defendant, Elmer C. Baum is the Chairman of the Democratic Party of Texas an unincorporated political association.

II.

On February 2, 1970, Plaintiff attempted to file with the Chairman of the Democratic Party of Dallas County for the office of Commissioner of Public Lands. Said request was refused on the grounds that state statute required that the applications be made in Austin, in person to the Executive Committee of the Democratic Party of Texas, by 6:00 p.m., February 2, 1970. Application was then made by telegram to said Defendant Chairman setting out the statutory information required to file for said office and informing them that a notarized copy was on file at the Dallas office. By return telegram February 2, 1970, the Defendant Chairman stated that said application was denied.

III.

Said filing was refused pursuant to state statute requiring that said filing fee be in the amount of $1,000.00, V.A.T.S. Election Code, art. 13.15, and V.A.T.S. Election Code, Act 13.12.

IV.

Plaintiff has substantially complied the statutory requirement of filing except for payment of the filing fee and the effect of such requirement deprives the majority of the right to run for, and therefore to hold office. Specifically it denies Plaintiff the equal protection of the laws required by the 14th Amendment of the United States Constitution in that it effectively denies him the equal opportunity to run for, and therefore hold office. It also sets a property requirement for holding office.

WHEREFORE, Plaintiff prays that Article 13.15 be held unconstitutional and therefore the filing for the Democratic primary of Texas closed by statute February 2, 1970 for the office of State Commission of Public Lands be reopened without filing fee or, in the alternative an injunction be issued ordering the Defendant Chairman to certify Plaintiff's name to the Defendant Secretary of State of Texas to be placed on the Democratic Party's ballot for Primary election of 1970 and that the Defendant Secretary of State of Texas be enjoined to accept such certification and to place Plaintiff's name on said ballots.

(Signature)
H. AVERIL SWEITZER
Fifth Floor, Manor House
1222 Commerce
Dallas, Texas 75202
747-2845

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

## SECOND AMENDED ORIGINAL THREE JUDGE APPLICATION AND COMPLAINT

Comes now the Plaintiff WILLIAM PATE, and files this his Second Amended Original Three Judge Application and Complaint with written consent of the adverse party first had pursuant to Rule 15(a) Federal Rules of Civil Procedure, and complaining of GEORGE A. McALMON JR., as Chairman of the County Democratic Executive Committee of El Paso County, Texas, the County Democratic Executive Committee of El Paso County, Texas, the Democratic Primary Committee of El Paso County, Texas, Preston Smith as Governor of the State of Texas, Crawford Martin, as Attorney General of the State of Texas, and Martin Dies, Jr., as Secretary of State of the State of Texas, and for cause of action would respectfully show unto the three Judge Court, the following:

The defendants, Preston Smith, Crawford Martin, and Martin Dies, Jr. are sued in their representative capacities as elected officers of the State of Texas. The various official individuals sued herein are charged with duties in connection with state and county primary and general elections. The Governor of the State of Texas, PRESTON SMITH, and the Attorney General of the State of Texas, CRAWFORD MARTIN, are also sued so that they will receive at least five days notice of hearings pursuant to 28 U. S. C. 2884 (2).

1. This action arises under the Equal Protection and Due Process Clauses of the Fourteenth Amend-

ment to the United States Constitution, and the Freedom of Assembly Clause of the First Amendment to the United States Constitution, which secures certain rights, privileges and immunities of all citizens, as the defendants have deprived the plaintiff of the right to an equally effective voice in the election process by an invidious discrimination by imposing upon those seeking to have their names placed upon the ballot as candidates for certain district, county, and precinct public offices in the El Paso County, Texas Democratic Primary Election set for May 2, 1970, exorbitant, unreasonable, arbitrary, capricious, irrelevant, and outrageously high filing fees or assessments which bear no reasonable relation to any legitimate legislative purpose and such filing fees are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. The filing fees or assessments are so high they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay or who fail or refuse to pay the filing fees or assessments imposed by the El Paso County Democratic Executive Committee. These filing fees also prevent qualified voters from voting for those persons whose candidacy is prevented by such filing fees. Plaintiff WILLIAM PATE is unable to pay and will not pay the filing fee or assessment of $1,424.60 set for the office of County Commissioner of Precinct Four, thus depriving him of his right to vote for himself.

Furthermore, the introduction of wealth as payment of a fee as a prerequisite or measure of a citizen's or voter's qualifications to have his name placed on the primary ballot, or to vote, is to introduce a capricious or irrelevant factor, and the requirement of fee paying in this context as a condition to be a candidate or voter

in the El Paso Democratic primary, causes an invidious discrimination that per se violates the Equal Protection Clause and furthermore, the Texas Statutes under attack permit and provide an invidious classification discrimination between various candidates for different offices by having different filing fees for the various candidates.

The County Democratic Executive Committee has deemed that the length of a prospective candidate's pocketbook alone will be made the yardstick as to whether his name appears or does not appear on the primary ballot. It is a fundamental rule of human nature and political behavior that high filing fees for public office tends to keep the "ins" in and the "outs" out. Furthermore, defendant will effectively deprive the plaintiff of his right to vote, for the right to run for public office is a correlative of the right to vote.

The defendants have denied the plaintiff and class plaintiffs their fundamental political right of freedom of association (political association) for the purpose of voting and being nominated as candidates for public office in the democratic primary in violation of the First Amendment, by reason of the Equal Protection and Due Process clauses of the Fourteenth Amendment, by an invidious discrimination through the establishment of filing fees as a prerequisite to running for nomination to public office.

2. Jurisdiction of this action is conferred upon the Court under the provisions of the Civil Rights Act, 42 USC Section 1983 and Section 1988, and also under 28 USC Sections 1343 (2), 2281 and 2284. This is an action for declaratory judgment initiated pursuant to 28 USC, Sections 2201 and 2202, for preliminary, interlocutory, permanent and mandatory injunctions and temporary restraining orders to prevent irreparable damage to

plaintiff, and for further and different relief as may be appropriate in equity and law, and seeks to redress the deprivation of Federal Constitutional rights. There is now existing between the parties an actual, justiciable controversy in respect to which plaintiffs need injunctive relief, a declaration of their rights, as well as other equitable relief and orders by this Court.

This complaint is based in part upon state action and the defendant's action as an agency of the State of Texas as the defendants participate in what is a part of the state's election machinery and they are election officers of the state de facto, if not de jure, in light of the Texas Election Code. The foregoing is supported by *Smith v. Allwright,* 1944, 321 U.S. 649; *Terry v. Adams,* 1953, 345 U.S. 461; *Harper v. Virginia State Board of Election,* 1966, 383 U.S. 663; *Williams v. Rhodes,* 1968 —— U.S. ——, and *Cipriano v. Houma,* 1969, —— U.S. ——.

3. This is a class action on behalf of the plaintiffs and all other people similarly situated to restrain the enforcement of a Texas statute and prospective resolutions and resolution of the County Democratic Executive Committee of El Paso County, Texas, which deprives the plaintiff and other members of the class to which Plaintiff Pate belongs, of rights, privileges and immunities secured by the Constitution of the United States. Plaintiff and class plaintiffs are all qualified voters, taxpayers and citizens of El Paso County, Texas, and putative or prospective democratic candidates in present and future Democratic primary elections for certain district, county and precinct public offices in El Paso County, Texas. Such persons are so numerous as to make it impractical to bring them all before the Court; the claim of the plaintiff is typical of the claims of such persons, and the plaintiff will

adequately and fairly represent the interest of such persons, and there are common questions of law or fact common to all plaintiffs and such persons. The plaintiff William Pate is a resident of County Commissioner's Precinct Four and has announced his intention to run for the office of County Commissioner for Precinct Four in El Paso County, Texas, and has filed his application for a place on the Democratic primary ballot for the May 2, 1970 primary election with the Chairman of the County Democratic Executive Committee of El Paso County, Texas. Furthermore, the plaintiff intends to run for the office of County Commissioner for Precinct Four in El Paso County, Texas in the May 1974 Democratic primary election and in future elections thereafter and to be a voter in such elections.

4. The defendant McALMON is a resident and citizen of El Paso County, Texas and is the duly elected chairman of the County Democratic Executive Committee of El Paso County, Texas. Defendant McAlmon as the Chairman of the County Democratic Executive Committee is the Democratic Party Officer with whom applications for a place on the Democratic Primary ballot for the present primary Democratic election set for May 2, 1970 and for future Democratic primary elections shall be filed in the case of district offices included wholly or partially with El Paso County, Texas and county and precinct offices within El Paso County, Texas. Application shall be filed by the first Monday in February preceding each primary. Within ten days after the first Monday in February, the El Paso County Democratic chairman shall lawfully certify to and file with the El Paso, Texas County Clerk a list of the names of all candidates whose applications have been timely received or filed. The Chairman of the County Democratic Executive Committee in primary elections

shall cause the proper ballot label to be placed on voting machines and will cause all official primary ballots to be printed.

5. Defendant Democratic primary committee, of which county democratic chairman is ex-officio chairman, make up the official ballot for the Democratic general primary in accordance with request filed with the County Democratic chairman on the official ballot.

6. In accordance with Article 13.08, Texas Election Code, the defendant Democratic County Executive Committee apportions the cost (by assessment) of the Democratic primary election among the various candidates for nomination for district, county and precinct offices, except candidates for the offices of Justice of the Court of Civil Appeals, office of the State Board of Education, the office of State Senator, and State Representative, and other State officials and pay the fixed filing fee set by Texas Statute.

The defendant Democratic Executive Committee makes an assessment against the candidates which must be paid to the Democratic Executive Committee chairman by the fourth Monday in February (February 23, 1970) and no person's name shall be placed on the ballot unless he pays the assessment within the prescribed time.

7. Historically, the defendant El Paso County Democratic Executive Committee has assessed each candidate a sum equal to twenty (20) percent of the aggregate annual salary provided for the office for which they seek election, except as otherwise provided by law. The assessments of candidates for Democratic Primary of May 2, 1970 has now been made for El Paso County, Texas, and has been set at seventeen (17) percent of the assessed salary, except as otherwise provided by

law. A list of assessments made for each office to be nominated at the May 2, 1970 primary election is marked Exhibit "A" and is attached hereto and adopted herein by reference for all intents and purposes. Plaintiff William Pate has been assessed $1,-424.60 as a filing fee for the office of County Commissioner of Precinct Four of El Paso County, Texas by the El Paso County Democratic Executive Committee ad its chairman. A copy of the assessment letter marked as Exhibit "B" is attached hereto and adopted herein by reference for all intents and purposes. Exhibit "C" attached hereto and adopted herein by reference for all intents and purposes, reflects the filing fees, if any, for primary and general elections of the fifty states as derived from state codes.

8. Defendant McAlmon is sued individually and in his representative capacity as Chairman of the County Democratic Executive Committee, El Paso County, Texas, and as the ex-officio chairman of the Democratic Primary Committee.

9. Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, are void and unconstitutional as they violate the equal protection and due process clauses of the Fourteenth Amendment, and the Freedom of Assembly clauses of the First Amendment to the United States Constitution, in that they impose and permit filing fees or assessments for candidates for public offices in the democratic primary election to be held May 2, 1970 and in future primary elections, upon persons who by reason of their lack of funds or poverty, are unable to pay said filing fees or assessments, or fail or refuse to pay said filing fees or assessments. The Chairman of the El Paso Democratic Executive Committee will not accept candidates' applications for a place on the ballot or file their names with the County Clerk of

El Paso County, Texas, unless a deposit of $50.00 is made and the assessment made by the Democratic Executive Committee is paid timely. The ex-officio chairman of the democratic party committee and the democratic party committee will not place any person's names on the official democratic primary ballot who has not filed an application for a place on the ballot along with the prerequisite of paying the deposit of $50.00 and the assessment as made by the democratic executive committee. The filing fee or assessment to be set by the El Paso Democratic executive committee is exorbitant, arbitrary, capricious, irrelevant, unreasonable, outrageously high, and bears no reasonable relation to any legitimate legislation purpose and are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. In setting filing fees and assessments at such unreasonable and outrageously high level, and permitting some candidates to file in the democratic primary by merely paying a fixed fee, as for State legislators, the fee of $150.00, the statutes in question and the prospective resolutions and resolution of the El Paso Democratic Executive Committee making assessments under Article 13.08, Texas Election Code, deprive the plaintiff and all other persons similarly situated, of rights, privileges and immunities secured by the equal protection and due process clauses of the 14th Amendment, and the freedom of assembly clause of the First Amendment to the United States Constitution, and establishes an invidious classification discrimination.

10. The plaintiff and all other persons similarly situated are unable to and refuse to pay the filing fees and assessments imposed by the Texas statutes under attack and the assessments to be made and made by the El Paso Democratic Executive Committee and the

State of Texas under the Texas election code which establishes fixed fees for some candidates, and therefore, they are deprived of their right to seek nomination to public office, to seek public office, and to the right to vote in the 1970 and in all future primary election.

WHEREFORE, plaintiffs pray for declaratory, injunctive relief, and for temporary restraining order as follows:

A. That this Court (single judge) immediately notify the Chief Judge of the Fifth Circuit that this application for injunctive and other relief has been presented to this Court in accordance with the procedure for a three Judge court under 28 USC 2281 and 2284, so that said Chief Judge of the Fifth Circuit can designate two other judges to serve as members of this Court to hear and determine this action or proceeding.

B. That this complaint and application be given precedence and be advanced on the docket and assigned for a hearing at the earliest practicable day.

C. That this Court order this matter litigated as a class action.

D. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against the plaintiff or similarly situated persons as a prerequisite to filing and application for a place on the ballot for public office in the Democratic Primary Election set for May 2, 1970 and all future primary elections.

E. That this Court order the defendants to place plaintiff's name and the names of other similarly situated persons on the official ballot in the Democratic

Primary election of May 2, 1970 and all future primary elections without the payment of the filing fees or assessments for the office of County Commissioner of Precinct Four, El Paso County, Texas, and for other public offices, in order that persons who are unable to afford the payment of outrageously high and unconstitutional filing fees or assessments may place their name in nomination for public office in the present and future democratic primaries in El Paso County, Texas, or who fail or refuse to pay any filing fees.

F. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against any person who seeks public office who is unable to afford the payment of outrageously high and unconstitutional filing fees or assessments, or who fails or refuses to pay any filing fee.

G. That Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, be declared void and unconstitutional.

H. That this Court grant relief in that the defendants be ordered to place plaintiffs name upon the ballot as a candidate for County Commissioner Precinct Four of El Paso County, Texas, so that voters will have the right to hear from the plaintiff as a candidate in the democratic primary, and to vote for him in all future primary elections.

I. That this Court issue a temporary restraining order directed to the Chairman of the El Paso County Democratic Executive Committee requiring him to certify to and file with the El Paso, Texas County Clerk, the plaintiff's name as a candidate for County Commissioner Precinct Four, El Paso County, Texas, and to place plaintiff's name on the official ballot for the

Democratic general primary set for May 2, 1970 without the payment of his assessment of $1,424.60 in order to prevent irreparable damage to plaintiff and class plaintiffs and that such hearing and ruling be had by February 19, 1970.

J. That the plaintiffs have the cost of their action against any defendant hereto and that plaintiffs have such other and further relief as to the Court shall seem just and proper.

Plaintiffs will amend their complaint so as to add any other party defendants or party plaintiffs as may be necessary and proper, and to allege other facts and seek other relief as the facts and the law may warrant.

Respectfully submitted,
CALAMIA & FASHING
(Signature)
JOHN L. FASHING
(Signature)
WILLIAM PATE

(Affidavit omitted in printing)

(Certificate of Service omitted in printing)

## EXHIBIT "A"

## ASSESSMENTS OF CANDIDATES FOR DEMOCRATIC PRIMARY
## EL PASO COUNTY
## MAY 2, 1970

1. All indicated salaries are those which will be paid in 1970, assuming the present pay scale is maintained, except that the indicated salaries of Justices of the Peace are those paid to each by the County of El Paso during 1969.

2. Except for representatives to the legislature whose filing fees of $150.00 are fixed by the Election Code, the assessment for each office is 17% of the assessed salary.

| Office | Salary | Assessed Salary | Assessment |
|---|---|---|---|
| County Clerk | $14,400.00 | $14,400.00 | $2,448.00 |
| County Treasurer | 9,600.00 | 9,600.00 | 1,632.00 |
| County Surveyor | None | None | None |
| County Courts at Law | 14,400.00 | 14,400.00 | 2,448.00 |
| County Judge | 14,400.00 | 14,400.00 | 2,448.00 |
| County Commissioner | 8,380.00 | 8,380.00 | 1,424.60 |
| 34th District Court | 23,900.00 | 3,984.00 | 677.28 |
| Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2. | | | |
| 120th District Court | 23,900.00 | 23,900.00 | 4,063.00 |
| 171st District Court | 23,900.00 | 23,900.00 | 4,063.00 |
| 168th District Court | 23,900.00 | 23,900.00 | 4,063.00 |
| District Attorney | 17,500.00 | 2,917.00 | 495.89 |
| Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2. | | | |
| District Clerk | 14,400.00 | 14,400.00 | 2,448.00 |
| **Justices of the Peace:** | | | |
| Precinct 1, Place 2 | 9,600.00 | 9,600.00 | 1,632.00 |
| Precinct 2 | 8,622.00 | 8,622.00 | 1,465.74 |
| Precinct 3 | 7,991.00 | 7,991.00 | 1,358.47 |
| Precinct 4 | 4,067.00 | 4,067.00 | 691.39 |
| Precinct 5 | 6,792.00 | 6,792.00 | 1,154.64 |
| Precinct 6 | 5,801.00 | 5,801.00 | 986.17 |
| Precinct 7 | 22,720.00 | 22,720.00 | 3,862.40 |
| Precinct 8 | 10,926.00 | 10,926.00 | 1,857.42 |
| U. S. Representative 16th Congressional District | 42,500.00 | 3,864.00 | 656.88 |
| Note: This office covers 11 Counties. For assessment the salary is divided by 11. | | | |

## EXHIBIT "B"

EL PASO COUNTY
DEMOCRATIC PARTY
508 Southwest Bank Building
EL PASO, TEXAS 79901
Telephone 533-6622

February 10, 1970

Mr. William (Bill) Pate
8705 Marble Drive
El Paso, Texas

Dear Mr. Pate:

You are advised that the County Democratic Executive Committee has established a filing fee for the office of County Commissioner, Pct. 4 in the amount of $1,424.60.

In order to insure your position on the ballot, it will be necessary

to pay your assessment on or before February 28, 1970, at this office. Since your original deposit was $50.00, the amount that must be paid is $1,874,60.

Sincerely,
DEMOCRATIC HEADQUARTERS
George A. Mc Almon
County Chairman

Note: Please use cash, certified check or money order.

## EXHIBIT "C"

A search of the statutes of the fifty states reveals that at least thirty-four states have provisions providing the payment of some fee before the candidates name can be placed on the ballot in the ballot in the general election. Although most of these provisions relate to primary elections, the effect is to preclude access to the general election ballot since nomination by primary is generally prerequisite to candidacy in the general election, e.g., Hawaii gen. Laws, Ch. 11, para. 91 (Supp. 1963); Minn. Stat. Ann. para. 202.02 (Supp. 1969); or a candidate to run in the general election as a member of a political party must be nominated by primary, e.g., Pa. Stat. Ann. para. 25-2862 (1963). This Appendix sets out the provisions in the states with reference to primary and general elections, and, in some instances, nominating petitions. It illustrates how high in proportion to such offices as United States Senator or Governor the fees the El Paso County Democratic Primary are for County and District Offices.

### FILING FEES FOR PRIMARIES AND GENERAL ELECTIONS OF THE FIFTY STATES DERIVED FROM STATE CODES.

| State | Office | Fee | Source |
|---|---|---|---|
| Alabama | Any person | Any assessment that may be required to be paid of him | Code Ala. Tit. 17, §348 (1958) |
| Alaska (primary) | Governor | $100.00 | Alas. Stat. Tit. 15, §15.25.50 (1962) |
| | Secretary of State | $100.00 | |
| | U. S. Senator | $100.00 | |
| | U. S. Representative | $100.00 | |
| | State Senator | $ 30.00 | |
| | State Representative | $ 30.00 | |
| Arizona | A search of the statutes revealed no state-wide legislation with respect to fees | | |
| Arkansas | Candidates file certificates of nomination | | Ark. Stat Ann. §3-261(g) (Supp. 1967) |
| | state-wide offices voted on by more than one district | $ .50 for each certificate<br>$ 3.00 | |
| | U. S. Representative | $10.00 | |
| | in single county | $ 3.00 | |
| | in township | $ 1.00 | |
| | in incorporated town or city | $ 1.00 | |
| California (declaration of candidacy in primary) | U. S. Senator | Two percent first year salary | Elec. Code Ann. §6552(a) (Deering Supp. 1969) |

| | | | |
|---|---|---|---|
| | State Office except State Senator or Assemblyman or Office to be voted for in a district comprising more than one county. | Two percent first year salary | Id. |
| | U. S. Representative | One percent first year salary | Id. §6552(b) |
| | Any office to be voted for in a district comprising more than one county, except State Senator or Assemblyman. | One percent first year salary | Id. |
| | State Senator or Assemblyman | One percent first year salary | Id. §6552(c) |
| | Offices to be voted for wholly within one county except | $ 10.00 | Elec. Code Ann. §6554 (Deering 1961) |
| | No fee required from any candidate for an office for which no fixed compensation is payable | | Id. §6554(b) |
| | No fee required for office for which compensation does not exceed $600. | | Id. §6554(c) |
| | Judicial Office | One percent annual salary | Id. §6554(d) |
| | County Office, salary of more than $2500 | Two percent annual salary | Id. §6554(e) |
| Write-in Candidate | When person hasn't filed declaration of candidacy and is nominated by having his name written on the ballot, he shall pay same fee that would have been required had his declaration been filed | | Id. §6555 |
| Colorado | Apparently no fees | | |
| Connecticut | All offices | Five percent annual salary | Gen. Stat. Conn. Tit. 9, §400 (1958) |
| persons other than party-endorsed nominees | except<br>Probate Judge<br>State Senator | $ 50.00<br>$ 25.00 | |
| Delaware | Apparently no fees | | |
| Florida | All offices | Three percent annual salary; not less than $180 for any state or legislative office | Fla. Stat. Ann. Tit. IX, §99.092 (Supp. 1969) |

| | | | |
|---|---|---|---|
| Georgia (general and special elections) | County Office militia district office State House of Representatives | Set by governing authority of county; "reasonable" | Ga. Code Ann. §34-1004 (Supp. 1968) |
| | Federal or State Office | Set by Secretary of State; "reasonable" | Id. |
| | Municipal Offices | Set by governing authority of municipality | Id. §34A-904 |
| Hawaii (primary) | Congressional, state or county office | $ 10.00 | Hawaii Gen. Laws Ch. 11, §97 (Supp. 1963) |
| Idaho (nominating election) | Salary $300 or less per annum | $ 2.00 | Idaho Code §34-608 |
| | Salary greater than $300 per annum | One percent on excess | Id. |
| Illinois | Apparently no fee | | |
| Indiana | Apparently no fee | | |
| Iowa | Apparently no fee | | |
| Kansas | In lieu of nomination papers | | |
| | U. S. Senator | One percent annual salary | Kan. Stat. Ann. §25-206 (Supp. 1968) |
| | U. S. Representative | Same | Id. |
| | All state offices county offices with salary greater than $1,000. | Same | Id. |
| | County offices with salary less than $1,000. | $ 5.00 | Id. |
| | State Senator | $ 10.00 | Id. |
| | State Representative | $ 5.00 | Id. |
| | Township Trustee | $ 1.00 | Id. |
| | All othe township | $ .50 | Id. |
| | Presidential Electors | $ 10.00 | Id. |
| Kentucky (primary) | All notification and declaration filed for primary | $ 1.00 | Ky. Rev. Stat. §119.250 (1962) |
| Louisiana (primary) | U. S. Senator | $100.00 | La. Rev. Stat. §18:310A (1969) |
| | U. S. Representative | $100.00 | |
| | Governor | $100.00 | Id. |
| | Justice of Supreme Court | $100.00 | Id. |
| | Judge of Court of Appeals | $100.00 | Id. |
| | Member, Public Service Commission | $100.00 | Id. |

| | | | |
|---|---|---|---|
| | All state officers voted for throughout a congressional district, public service commission district, supreme court district, court of appeal district, all candidates for membership on any state board or commission, all candidates for any office of state character whose election is provided for by law | $100.00 | Id. |
| | District or parish office | $ 5.00 | Id. §18:311A |
| | Ward office | $ 1.00 | Id. |
| | Municipal office | Not more than $100.00 | Id. §18:311E |
| | Any office in municipality of more than 300,000 except Orleans Parish School Board | $5000.00 | Id. §18:592 |
| Maine | Apparently no fee | | |
| Maryland | Governor | $290.00 | Am. Code Md. Art. 33 §4A-6(b) (Supp. 1968) |
| | Comptroller | $290.00 | Id. |
| | Attorney General | $290.00 | Id. |
| | U. S. Senator | $100.00 | Id. §4A-6(c) |
| | U. S. Representative | $ 25.00 for each county or legislative district of Baltimore City where name on ballot | Id. §4A-6(a) |
| | other state officers each candidate except as otherwise provided | $ 10.00 | Id. |
| | County offices paying less than $300 | $ 50.00 | Id. §4A-6(d) |
| | State Senator | | Id. §4A-6(e) |
| | Candidates nominated by primary meeting and petition must pay the fee in accordance with the foregoing conditions | | |
| Massachusetts | Apparently no fee | | |
| Michigan | Filing fee in lieu of nominating petition | | |
| | State Senator | $100.00 | Mich. Stat. Ann. §6.1163 (Supp. 1969) |
| | State Representative | $100.00 | Id. §6.1198 |
| | Prosecuting Attorney, County | $100.00 | Id. |
| | Sheriff | $100.00 | Id. |
| | County Clerk | $100.00 | Id. |
| | County Treasurer | $100.00 | Id. |
| | Register of Deeds | $100.00 | Id. |
| | Drain Commissioner | $100.00 | Id. |
| | Coroners | $100.00 | Id. |
| | Surveyor | $100.00 | Id. |
| | County Auditor | $100.00 | Id. §6.1254 |

| | | | |
|---|---|---|---|
| | County Road Commissioner | $100.00 | Id. §6.1224 |
| | n.b. All of the foregoing sections contain provisions that the $100.00, shall be returned to all candidates nominated and to a like number of candidates who are next highest | | |
| | Judge, Municipal Court of Record | $100.00 (no provision for return) | Id. §6.1426(4) |
| Minnesota (primary) | U. S. Senator | $150.00 | Minn. Stat. Ann. |
| | Governor | $100.00 | §202.05 (Supp. 1969) |
| | Lt. Governor | $100.00 | Id. |
| | Secretary of State | $100.00 | Id. |
| | State Auditor | $100.00 | Id. |
| | Railroad Commissioner | $100.00 | Id. |
| | Judge, Supreme Court | $100.00 | Id. |
| | Judge, District Court | $100.00 | Id. |
| | U. S. Representative | $100.00 | Id. |
| | State Legislature | $ 20.00 | Id. |
| | County Office | $ 20.00 | Id. |
| Mississippi (primary) | U. S. Senator | not to exceed $300.00 | Miss. Code Ann. Tit. 14, §3120 (Supp. 1968) |
| | Governor | not to exceed $300.00 | Id. |
| | U. S. Representative | not to exceed $200.00 | Id. |
| | Major State-wide Offices | not to exceed $200.00 | Id. |
| | Circuit Judge | not to exceed $100.00 | Id. |
| | Chancellor | not to exceed $100.00 | |
| | District Attorney | not to exceed $100.00 | Id. |
| | State Legislator | not to exceed $ 15.00 | Id. |
| | Major county offices | not to exceed $ 15.00 | Id. |
| | Minor county offices | not to exceed $ 10.00 | Id. |
| Missouri (primary) | State-wide office | $100.00 | Mo. Stat. Ann. |
| | Member of Congress | $ 50.00 | §120.350 (1966) |
| | Circuit Judge | $ 50.00 | Id. |
| | State Senator | $ 50.00 | Id. |
| | State Representative | $ 25.00 | Id. |
| | Officers in first class cities | $ 10.00 | Id. §74.060 |
| | St. Louis City Officers | 2%-one year's salary | Id. §122.710 |
| Montana | Mayor, commission form of government | $ 20.00 | Rev. Code Mont. §11-3115 (1968) |
| | Councilman, commission form of government | $ 15.00 | Id. |
| | Primary offices having salary $1,000 or less except | $100.00 | Id. §23-3304 (Supp. 1969) |

| | | | |
|---|---|---|---|
| | Legislature or Lt. Gov. | $ 15.00 | Id. |
| | Offices having salary greater than $1,000 | One percent of salary | Id. |
| | County Commissioners | | Id. |
| | Counties 1st Class | $ 40.00 | Id. |
| | Counties 2nd Class | $ 35.00 | |
| | Counties 3rd Class | $ 30.00 | Id. |
| | Counties 4th Class | $ 25.00 | Id. |
| | Other counties | $ 10.00 | Id. |
| | Offices with compensation in fees | $ 5.00 | Id. |
| Nebraska (primary) | U. S. Senator | One percent annual salary | Rev. Stat. Neb. §32-513 (Supp. 1967) |
| | U. S. Representative | Same | Id. |
| | State Officers | Same | Id. |
| | County Officers | Same | Id. |
| | Directors Public power, irrigation, reclamation districts | If salary greater than $1,000, $25; If less than $1,000, $10 | Id. |
| | City offices | $ 5.00 | Id. |
| | Delegate National Convention | $ 25.00 | Id. |
| | Alternate Delegate national convention | $ 15.00 | Id. |
| Nevada (primary) | U. S. Senator | $250.00 | Nev. Rev. Stat. §293.193 (1967) |
| | U. S. Representative | $150.00 | Id. |
| | Governor | $150.00 | Id. |
| | Supreme Court Justice | $150.00 | Id. |
| | Other state offices | $100.00 | Id. |
| | Any district office | $ 75.00 | Id. |
| | Any county office | $ 40.00 | Id. |
| | State Senator | $ 30.00 | Id. |
| | Assemblyman | $ 15.00 | Id. |
| | Justice of the Peace | $ 10.00 | Id. |
| | Constable | $ 10.00 | Id. |
| | Other town or township offices | $ 10.00 | Id. |
| | Fees-in-city-of-first or second class set by city clerk | | Id. |
| New Hampshire (primary) | U. S. Senator | $100.00 | N. H. Rev. Stat. Ann. Tit. IV, §56.14 (1955) |
| | Governor | $100.00 | Id. |
| | U. S. Representative | $ 50.00 | Id. |
| | Other state officers | $ 50.00 | Id. |
| | Councilor | $ 25.00 | Id. |
| | State Senator | $ 10.00 | Id. |
| | County officer | $ 5.00 | Id. |
| | State Representative | $ 2.00 | Id. |
| | Ward officers | $ 1.00 | Id. |

| | | | |
|---|---|---|---|
| New Jersey | Apparently no fees | | |
| New Mexico (primary) | All except City Officers receiving salary | Six percent first year's salary | New Mex. Stat. Ann. §§3-11-8.1,3-11-2.3 (Supp. 1967) |
| | Lt. Governor | $400.00 | New Mex. Stat. Ann. §3-11-8.1 |
| | Legislator | $ 50.00 | Id. |
| | Justice of the Peace | $ 50.00 | Id. |
| | Constable | $ 20.00 | Id. |
| | County Surveyor | $ 20.00 | Id. |
| New York | Apparently no state-wide fees | | |
| North Carolina (primary) | Governor | One percent annual salary | Gen. Stat. N. C. §163-107 (Supp. 1967) |
| | All state executive offices | Same | Id. |
| | Lt. Governor | Same | Id. |
| | Justices of Supreme Court | Same | Id. |
| | Judges, Superior Courts | Same | Id. |
| | Judges, District Courts | Same | Id. |
| | Solicitors | Same | Id. |
| | U. S. Senator | Same | Id. |
| | U. S. Representative | Same | Id. |
| | State Senator | Same | Id. |
| | State Representative | Same | Id. |
| | All county offices not compensated by fees | Same | Id. |
| | All township offices not compensated by fees | Same | Id. |
| | County Commissioners, if compensated entirely by fees | $ 10.00 | Id. |
| | Members of County Board of Education, if compensated entirely by fees | $ 5.00 | Id. |
| | Sheriff, if compensated entirely by fees | $ 40.00, plus 1% of income of office over $4,000 | Id. |
| | Clerk of Superior Court if compensated entirely by fees | Same | Id. |
| | Register of Deeds, if compensated entirely by fees | Same | Id. |
| | Any other county office if compensated entirely by fees | $ 20.00, plus 1% of income of office over $2,000 | Id. |
| | Constable, if compensated entirely by fees | Same | Id. |
| | Justice of the Peace, if compensated entirely by fees | $ 10.00, plus 1% of income above $1,000 | Id. |
| | All county and township offices compensated partly by salary and partly by fees | 1% of first annual salary to be received exclusive of fees | Id. |

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| North Dakota | Apparently no fees | | |
| Ohio (primary) | All offices | One half of one percent annual salary, not less than $1. or more than $50. | Ohio Rev. Code Ann. §3513.10 (1960) |
| | Statement of candidacy and nominating petition All offices | Same | Id. §3513.261 (Supp. 1968) |
| Oklahoma | Apparently no fees | | |
| Oregon (primary) | U. S. Senator | $150.00 | Ore. Rev. Stat. §249.271 (1967) |
| | U. S. Representative | $100.00 | Id. |
| | Offices State at Large | $100.00 | Id. |
| | Circuit Court Judge | $ 50.00 | Id. |
| | County offices | $ 20.00 | Id. |
| | State Legislature | $ 10.00 | Id. |
| | National Committeeman | $ 15.00 | Id. |
| | District Officer in County | $ 5.00 | Id. |
| Pennsylvania (nominating petition) | U. S. President or any public office to be filled by electors of state at large | $ 50.00 | Pa. Stat. Ann. §25-2873 (1963) |
| | U. S. Congress | $ 35.00 | Id. |
| | Judge, Court of Record, excepting judges elected by state at large | $ 35.00 | Id. |
| | Associate Judge | $ 35.00 | Id. |
| | State Legislator | $ 25.00 | Id. |
| | County office, other than jury commissioner, associate judge, prison inspector or county auditor in counties of the eighth class | $ 25.00 | Id. |
| | Jury Commissioner | $ 10.00 | Id. |
| | Associate Judge | $ 10.00 | Id. |
| | County Auditor, counties of the eighth class | $ 5.00 | Id. |
| | Prison Inspector | $ 2.00 | Id. |
| | District Councilman, first class cities | $ 25.00 | Id. |
| | Offices to be filled by electors if entire city: | | |
| | First or second class city | $ 25.00 | Id. |
| | City of Second Class A | $ 15.00 | Id. |
| | City of Third Class | $ 10.00 | Id. |
| | Borough, town, township of first class, school district or poor district office not otherwise provided for | $ 2.00 | Id. |
| | Delegate or Alternate Delegate to National party convention | $ 10.00 | Id. |

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| | Member of National or State Committee | $ 10.00 | Id. |
| | Alderman | $ 2.00 | Id. |
| | Justice of the Peace | $ 2.00 | Id. |
| | Constable | $ 2.00 | Id. |
| | Township Auditor | $ 1.00 | Id. |
| | Road Supervisor | $ 1.00 | Id. |
| Rhode Island | Apparently no fee | | |
| South Carolina | The amounts of assessments to be paid candidates at the time of the filing of the notice of candidacy shall be fixed as to each office by State or County Committee, as the case may be, with whom the notice and pledge has to be filed hereunder for such office | | Code S. C. §23-400.74 (Supp. 1968) |
| South Dakota | Apparently no fee | | |
| Tennessee | Apparently no fee | | |
| Texas (primary) | Any precinct, county or district office in counties with population of one million or more, except State Legislature and State Board of Education | Not to exceed 10% aggregate annual salary provided for any office of two year terms, and 15% aggregate annual salary for any office of four year terms. | Ann. Tex. Stat. Election Code Art. 13.08a (1967) |
| | State Representative from county one-million population or more | Not in excess of $500.00 | Id. |
| | State Senator from county one million population or more | $1,000.00 | Id. |
| | State Senator or Representative from county, population 900,000 to 1,000,000 | $ 300.00 | Id. |
| | State Senator or Representative from county, population 650,000 to 900,000 | $ 500.00 | Id. |
| | State Representative from District consisting of eight and not more than nine counties | $ 25.00 | Id. |
| | State Senator or Representative from county, population 350,000 to 640,000 | $ 300.00 | Id. Art. 13.08a-1 |
| | State Board of Education | $ 50.00 | Id. Art. 13.08 |
| Utah (Direct primary) | State, county offices | One fourth of 1% of total salary for full term but not less than $5 | Utah Code Ann. §20-3-14 (1969) |
| | All precinct offices | $ 1.00 | Id. |
| Vermont | Apparently no fee | | |

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| Virginia (primary) | Every candidate for any office at any primary shall, before he files his declaration of candidacy pay a fee equal to two percentum of one year's salary attached to the office for which he is candidate | | Code of Virginia §24-398 (1969) |
| Washington (primary) | Office with annual salary more than $1,000 | One per cent annual salary | Rev. Code Wash. §29.18.050 (1965) |
| | Office with annual salary less than $1,000 | $ 10.00 | Id. |
| | Precinct Office without salary | $ 1.00 | Id. |
| West Virginia (primary) | U. S. President | One percent annual salary | W. Va. Code §3-5-8(a) (1966) |
| | U. S. Vice President | Same | Id. |
| | U. S. Senator | Same | Id. |
| | U. S. Representative | Same | Id. |
| | Governor | Same | Id. |
| | All othe state elective offices | Same | Id. |
| | Judge, Circuit Court | One percent of total annual salary of the office paid from any and all sources for which he announces | Id. §3-5-8(b) |
| | Judge any court of record of limited jurisdiction | Same | Id. |
| | House of Delegates | $ 15.00 | Id. §3-5-8-(c) |
| | State Senator | $ 30.00 | Id. |
| | Sheriff | One percent annual salary not less than $5.00 | Id. §3-5-8(d) |
| | Prosecuting Attorney | Same | Id. |
| | Circuit Clerk | Same | Id. |
| | County Clerk | Same | Id. |
| | Assessor | Same | Id. |
| | Member County Court | Same | Id. |
| | County Board of Education | Same | Id. |
| | Any other county office | Same | Id. |
| | Justice of the Peace, district population 5,000 or less | $ 10.00 | Id. §3-5-8(e) |
| | Justice of the Peace, district population 5,000-25,000 | $ 15.00 | Id. |
| | Justice of the Peace, district population over 25,000 | $ 25.00 | Id. |
| | Constable, district population 5;000 or less | $ 5.00 | Id. §3-5-8(f) |
| | Constable, district population 5,000-25,000 | $ 10.00 | Id. |
| | Constable, all other districts | $ 15.00 | Id. |
| | Delegates-at-large National Convention | $ 20.00 | Id. §3-5-8(g) |
| | Delegates from congressional district, National Convention | $ 10.00 | Id. |

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| | Party State Executive Committee | $ 10.00 | Id. §3-5-8(h) |
| | Party County Executive Committee | $ 1.00 | Id. |
| | Member Congressional Senatorial or Delegate District Committee | $ 1.00 | Id. |
| Wisconsin | Apparently no fee | | |
| Wyoming | | | |
| Petition for nomination | | | |
| | electors wholly within one county | $ 10.00 | Wyo. Stat. §22-118.13 (Supp. 1969) |
| | Whole state or area larger than one county | $ 20.00 | Id. |
| Application for nomination by primary | | | |
| | electors wholly within one county | $ 10.00 | Id. §22-118.16 |
| | Whole state or area larger than one county | $ 20.00 | Id. |

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DISTRICT

CIVIL ACTION NO. 4-1367

(Title omitted in prniting)

## PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION

1. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343(3). This is a class action on behalf of the plaintiff and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee, which deprives the plaintiff and other members of the class to which he belongs of rights, privileges, and immunities secured by the Constitution of the United States. This is an action for declaratory judgment initiated pursuant to 28 U.S.C. 2201 and 2202.

2. A three-judge court is being requested, pursuant to 28 U.S.C. 2281 and 2284.

3. This is a lawsuit challenging the constitutionality of the "Rich Man's Primary" in Texas, a device, scheme, or subterfuge designed to eliminate "nuisance candidates" (Campbell v. Davenport, 1966, 362 F. 2d 624) who cannot afford to buy their way on to the primary ballot by the payment of substantial qualifying fees beyond the financial ability of the average citizen who may aspire to public office.

4. The plaintiff, Theodore H. Wischkameper, is a resident citizen and qualified voter of the City of Fort Worth, Tarrant County, Texas, who meets the qualifications for the office of County Judge set forth in Art. 5, Sec. 15, of the State of Texas, which provides

merely that "he shall be learned in the law of the State." On December 15, 1969, plaintiff timely filed his formal application with the Chairman of the Tarrant County Democratice Executive Committee to be a candidate for the office of County Judge of Tarrant County, Texas, in the Democratic Primary Elections to be held on May 2, 1970, and June 6, 1970.

5. The original defendant in this lawsuit was Robert L. Wright, who was sued in his representative capacity as Chairman of the Tarrant County Democratic Executive Committee on December 15, 1969; the citation, or summons, was served on December 17, 1969, ". . . by delivering a copy of this summons along with the complaint to Mr. Robert L. Wright, personally, as Chairman of the Tarrant County Democratic Executive Committee. . . ." The original defendant filed an answer on January 7, 1970, alleging that he was no longer Chairman of said Committee and had not been sued in his individual capacity. The present Chairman of the Tarrant County Democratic Executive Committee is Dr. J. D. Tomme, Jr. On January 12, 1970, plaintiff filed a motion to have Dr. Tomme served with citation, but the Court has not acted on this motion to date; Dr. Tomme has been furnished with copies of all of plaintiff's pleadings as they were filed.

6. The defendant, Dr. J. D. Tomme, Jr., and his successors in office, in the event of other resignations, as Chairman of the Tarrant County Democratic Executive Committee, is the officer authorized by law to accept qualifying fees from candidates for the various local offices whose names will appear on the ballot in the 1970 Democratice Primaries.

7. The plaintiff is informed and believes that the Tarrant County Democratic Executive Committee have enacted a resolution which imposes a qualifying fee

of $6,300.00 for candidates for the office of County Judge in the 1970 Democratic Primaries, and various other qualifying fees too numerous to set forth in this pleading, which range from $50.00 for some offices, up to the incredible figure of $8,900.00 for other offices! Said figures have been assessed mainly on the basis of eight per cent of the salary for the full term of office, which would amount to sixteen per cent of one year's salary for two-year offices, and thirty-two per cent of one year's salary for four-year offices.

8. The plaintiff is further informed and believes that under said resolution of the Tarrant County Democratic Executive Committee imposing exorbitant qualifying fees on candidates for office in the Democratic Primaries to be held on May 2, 1970, and June 6, 1970, persons, who, by reason of their poverty are unable to pay said qualifying fees will not be certified by the defendant Chairman of the Tarrant County Democratic Committee, or his successors in office if he decides to resign, as having qualified, and their names will not appear on the ballot for the Democratic Primaries.

9. The qualifying fees which have been set by the resolution complained of are unreasonable, exorbitant, prohibitive, and bear no reasonable relation to any legitimate legislative purpose, said fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to buy their way on to the ballot.

10. In setting qualifying fees at such an unreasonable and outrageously high level, the said Tarrant County Democratic Executive Committee, deprives the plaintiff and all other persons similarly situated of rights, privileges, and immunities secured to them by

the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

11. Although the primary machinery was originally the private affair of the party, it has become absorbed by the State, which has exercised its authority over primary elections with the rules and regulations laid down in cumbersome detail. The party committees are so much controlled by State authority that they are without power to vary on their own initiative the qualifications prescribed for voters, candidates or committee members. Nixon v. Condon, 286 U. S. 73.

12. Art. 13.08 of the Texas Election Code authorizes the County Executive Committees of the various political parties to carefully apportion the costs of the primaries among the candidates. "In making the assessment upon any candidate," the statute says, "the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is made." Art. 13.08a limits the qualifying fees in certain counties, to ten per cent of one year's salary for two-year offices and fifteen per cent of one year's salary for four-year offices, a legislative ceiling which should apply uniformly throughout the State, under the equal protection clause of the Fourteenth Amendment.

13. The qualifying fees adopted throughout Texas, for the 1970 Democratic Primary Elections, are so notoriously unequal that they are discriminatory on their face. For instance, the qualifying fee for District Judge in Harris County is $3,900.00, in Dallas County it is $6,720.00, and in Tarrant County it is $8,900.00. Further, the qualifying fees for candidates for the office of County Judge in five neighboring counties are as follows: Denton County, seven per cent of one year's

salary, or $770.00; Ellis County, eight per cent of one year's pay, or $800.00; Parker County, ten per cent of one year's salary, or $970.00; Dallas County, twenty-four per cent of one year's salary, or $5,760.00; and Tarrant County, thirty-two per cent of one year's salary, or $$6,300.00. As Mr. Justice Matthews said, in Yick Wo v. Hopkins, 118 U. S. 356: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

14. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

15. Under the Texas statutes, voters wanting as a candidate a man, such as plaintiff, who is unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unstitutional burden on the voters; the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

16. Plaintiff alleges that there is a clear and imminent threat of irreparable injury amounting to manifest oppression in the event the Federal Courts fail to protect him and others similarly situated from a schedule or system of filing fees so arbitrary, so ca-

pricious, and so discriminatory as to be substantially lacking in safeguards of a procedural nature.

Wherefore, premises considered, plaintiff prays that this Honorable Court issue its immediate temporary restraining order, restraining defendant, Dr. J. D. Tomme, Jr. (and his successors in office if he resigns), as Chairman of the Tarrant County Democratic Executive Committee from determining by lot the order of candidate's names on the ballot, on March 16, 1970 (per Art. 13.17a) or from making up the ballot for the first primary (per Art. 13.14) on March 23, 1970, or from enforcing in any manner the schedule of filing fees herein complained of as violating plaintiff's constitutional rights, privileges and immunities, pending a hearing on an interlocutory injunction before a three-judge court. Plaintiff further prays that a three-judge court be expeditiously convened, so that the interlocutory injunction request and the lawsuit on the merits may be heard and considered with all due speed; and so that the questions involved herein may be resolved, by appeal to the United States Supreme Court if necessary, in advance of the primary elections on May 2, 1970 (see Gong v. Kirk, 1967, 375 F. 2d 728); and that pending a hearing on the merits an interlocutory injunction be granted, suspending or restraining the enforcement, operation, or execution of any statute of the State of Texas, or any resolutions of the Tarrant County Democratic Executive Committee, imposing a property qualification in the form of a filing fee as an unconstitutional precondition to candidacy for public office for plaintiff and others similarly situated; and that upon final hearing hereof, a permanent injunction issue permanently enjoining the imposition of a property qualification in the form of a filing fee as a precondition to candidacy for public office for plaintiff and other similarly situated. Pending the

final determnation of this lawsuit, plaintiff especially prays that he, and others similarly situated, be temporarily relieved from the payment of any qualifying fees, or filing fees, and that the time for filing notice of candidacy be extended, since the constitutional question involved is a substantial one, which may require the decision of the entire United States Supreme Court. Matthews v. Little, 1969, 24 L. Ed. 2d 45.

March 13, 1970.

Respectfully submitted,

(Signature)
A. L. Crouch,
Attorney for Plaintiff

(Verification omitted in printing.)

(Certificate of Service omitted in printing.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DISTRICT

CIVIL ACTION NO. 4-1367

(Title omitted in printing)

## PLEA IN INTERVENTION

Comes now Reubin Jenkins, hereinafter styled intervenor, and would respectfully show unto the Court the following:

1. Intervenor is a resident citizen, taxpayer, qualified voter, and duly elected Democratice Precinct Chairman of Election Precinct Number 93, of Fort Worth, Tarrant County, Texas.

2. The jurisdiction of this court is invoked pursuant to 42 U.S.C. 1983 and U.S.C. 1343(3). This is a class action, within the scope of Rule 23 of the Federal Rules of Civil Procedure, on behalf of intervenor and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee which deprives intervenor and other members of the class or classes to which he belongs of rights, privileges and immunities secured by the Constitution of the United States of America.

3. This is an action for a declaratory judgment initiated pursuant to 28 U.S.C. 2201 and U.S.C. 2202. A three-judge district court is being requested, as provided in U.S.C. 1973, from which an appeal will lie directly to the United States Supreme Court.

4. The plaintiff in this lawsuit is Theodore H. Wischkaemper, a resident of Fort Worth, Tarrant County, Texas, who has timely filed his application to

be a candidate for the office of County Judge of said County in the Democratic Primary Election set by law for May 2, 1970.

5. The defendant in this lawsuit is the Hon. Robert L. Wright, Chairman of the Tarrant County Democratic Executive Committee, and his successors in office. The Chairman of the Tarrant County Democratic Executive Committee is the officer authorized by law to accept qualifying fees, or filing fees, from candidates for the various offices to appear on the ballot in the Democratic Primary Election to be held in Tarrant County, Texas, on May 2, 1970.

6. The plaintiff filed his Original Petition in this lawsuit, pro se, on December 15, 1969; and the Hon. Robert L. Wright, then Chairman of the Tarrant County Democratic Committee, after being duly served with citation on December 17, 1969, filed his Original Answer on or about January 6, 1970.

7. On January 13, 1970, plaintiff filed his "First Amended Petition" in this lawsuit, prose, alleging that "the said Robert L. Wright resigned as Chairman of the Tarrant County Democratic Executive effective January 1, 1970. And that the Honorable Court make as binding on Dr. J. D. Tomme, who assumed that office on Jan. 1, 1970, plaintiff's original petition and citation servised (sic) on Robert L. Wright by the U. S. Marshall's office on December 17, 1969, as though servised (sic) on Dr. J. D. Tomme." Both Robert L. Wright and his successor in office, Dr. J. D. Tomme, have been furnished with copies of both the plaintiff's Original Petition and his "First Amended Petition," according to a certificate signed by the plaintiff at the bottom of the pleading filed on January 13, 1970.

8. Intervenor is informed and believes that the Tarrant County Democratic Executive Committee adopted a schedule of qualifying fees for candidates who want their names to appear on the ballot in the Democratic Primary Election set for May 2, 1970; said fees, ranging in amount from $50.00 to $8,900.00, have been assessed at approximately eight per cent of the total amount of the salary of the office for the entire term. For two-year offices, the assessment would thus be approximately sixteen per cent of one year's pay; and for four-year offices, such as County Judge, the assessment would be approximately thirty-two per cent of one year's pay. The fee actually assessed for the office of County Judge is $6,300.00, an amount which plaintiff was unable to pay.

9. The schedule of qualifying fees which defendant, Dr. J. D. Tomme, is attempting to enforce are exorbitant, excessive, and unreasonable, and bear no relationship to any legitimate legislative purpose, such fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay the fees demanded.

10. The intervenor is informed and believes that plaintiff and other persons, who, by reason of their financial condition or outright poverty, are unable to pay such exorbitant qualifying fees will not be permitted to participate in the drawing for places on the ballot, set by Art. 13.17a for March 16, 1970, by the defendant, Dr. J. D. Tomme.

11. The intervenor is also informed and believes that the said defendant, Dr. J. D. Tomme, will not certify the names of those candidates who are unable to pay said exorbitant qualifying fees to the primary committee, when it meets on March 23, 1970, to make up the ballot for the May 2, 1970, primary, pursuant to

Art. 13.14; and that said committee will actually leave the names of such persons, including the plaintiff, from the official ballot to be used in said primary election.

12. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

13. Under the Texas statute, voters wanting as a candidate a man, such as plaintiff, who is unwilling or unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unconstitutional burden on the voters. Intervenor hereby asserts that the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

14. In States such as Texas, where the primary election is in a real sense the only true election, the vote at the final election is merely a formal flourish, except in rare cases. It is common knowledge that whoever receives the Democratic nomination to an office in Tarrant County, Texas, is elected to the office in the General Election. Sixty candidates for the May 2 Democratic primary have paid filing fees for 39 positions, while only 9 Republican candidates have paid filing fees for 8 positions in the Republican primary. There is no Republican seeking the office of County Judge in Tarrant County this year, so that the Democratic nomination for the office which plaintiff seeks is tantamount to election.

15. Intervenor believes that his vote has been impaired, lessened, diminished, diluted, and destroyed by the fact that his choice on the primary ballot (and thereby the election itself) is limited to those who are willing and able to pay an exorbitant and prohibitive qualifying fee; and that he has been denied his constitutional right to participate in the elective processes by reason of the fact that defendant, Dr. J. D. Tomme, is attempting to enforce an unconstitutional property qualification on candidates for public office in the Democratic Primary Election, which is an integral part of the procedure for electing public officials in Texas.

16. Texas has delegated its function of conducting primaries to the political parties, and in this respect the party's action is the action of the State.

17. The pertinent provisions of the Texas Election Code have been amended by the Texas Legislature since November 1, 1964, or have been reenacted since that date. The resolution of the Tarrant County Democratic Executive Committee, adopting the schedule of qualifying fees herein complained of, was adopted on February 9, 1970.

18. A qualifying fee for the office of County Judge is contrary to and in violation of the Constitution of the State of Texas, in that it requires from plaintiff, as a candidate for said office, a property qualification (i.e., possession of $6,300.00 in cash) in addition to the qualification set forth in the State Constitution, Art. 5, Sec. 15, which provides merely that "he shall be learned in the law of the State."

19. In addition to plaintiff, there are at least three other candidates who are being denied a place on the Democratic Primary ballots because of their inability

to pay qualifying fees; Van Phillip Carter, candidate for State Land Commissioner ($1,000.00 fee); and Mrs. Vernon R. "Dick" Winters and Pearce Scott, the only two candidates who filed for Public Weigher ($50.00 fee). Candidates for Public Weigher are customarily not assessed a filing fee in Tarrant County, because the job carries no salary. But Mr. Scott is a Negro. Enough said. No filing fee, no public weigher.

20. Intervenor is informed and believes that the schedule of Tarrant County qualifying fees was not prepared in the statutory manner, even though statutes relating to the financing of primaries must be carefully construed and strictly followed. The expenses, instead of being carefully estimated and apportioned by the entire Tarrant County Democratic Executive Committee, "in such manner as in their judgment is just and equitable," as contemplated by Art. 13.07a and 13.08 of the Texas Election Code, were actually estimated and apportioned by a clandestine illegal committee of three intruders, who wrongfully attempted to usurp the discretionary judicial functions of the entire Tarrant County Democratic Executive Committee of more than one hundred and fifty members duly elected by the voters of Tarrant County in the various voting precincts. The attempt of the Tarrant County Democratic Executive Committee to ratify the ultra vires act of the committee of intruders was ineffective and void. It is now impossible for the Tarrant County Democratic Executive Committee to reconvene and estimate and apportion the expenses of the election on the second Monday in February, since that date is already passed; and that, therefore, no legal schedule of filing fees has ever been adopted for Tarrant County for the 1970 Democratic Primary Election; so that, no matter what the courts decide as to the legality or constitution-

ality of qualifying fees for the rest of the State, all filing fees, or qualifying fees for Tarrant County for the year are null and void under State law, as well as under the State and Federal Constitutions, and should be so held by the courts.

21. Intervenor is informed and believes that the sums of money demanded and received by the present Chairman of the Tarrant County Democratic Executive Committee of candidates desiring a place on the ballot in the party primaries are grossly in excess of the amount sufficient to cover the reasonable and necessary expenses involved. It has been customary for said fees to overestimated to such an extent that rebates of up to forty per cent are not uncommon in Tarrant County after the legitimate expenses of the primaries have been paid. As a matter of fact, the County Democratic Chairman has been twice sued by candidates claiming that he has wrongfully and unlawfully expended and kept several thousand dollars and this after substantial rebates! Overassessment of filing fees is a wicked device, which, like the poor, we have with us always.

Wherefore, premises considered, Intervenor prays that a three-judge Federal District Court be impanelled to hear plaintiff's cause of action, together with this Plea in Intervention; and, that pending such hearing and the appeal thereof to the United States Supreme Court, a temporary restraining order, an interlocutory injunction and a permanent injunction, or such of them as may be appropriate, issue enjoining the holding of the Democratic Primary Election now set for May 2, 1970, until such time as defendant J. D. Tomme and other Democratic Party officials afford a reasonable opportunity to apply for positions on the Democratic Primary ballots any and all persons who cannot afford

to pay the qualifying fees which have been demanded as a precondition to candidacy for public office. Intervenor also prays that the drawing for places on the ballot be restrained and enjoined as well; and that injunctive relief be immediately granted, compelling the Democratic Party of Texas and of Tarrant County to refrain from imposing qualifying fees as a condition to filing for public office; and for such other relief in law and in equity to which he may show himself justly entitled.

THEODORE H. WISCHKAEMPER
on behalf of himself
and all others similarly situated,
plaintiff

vs. PLEA IN INTERVENTION

ROBERT L. WRIGHT
Chairman of the Tarrant County
Democratic Executive Committee
and his successors in office

(Verification omitted in printing)

Respectfully submitted,
(Signature)
A. L. CROUCH
*Attorney for Intervenor.*

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

**MOTION FOR CONSOLIDATION OF ABOVE ACTIONS; MOTION TO INTERVENE AS A PLAINTIFF OR CLASS PLAINTIFF; MOTION TO EXPEDITE AND FOR TEMPORARY ORDERS**

Come now the Plaintiffs-Intervenors in the above styled and numbered actions and pursuant to 28 U.S.C. 1392 and 1393 and Rules 24 and 42(a) Federal Rules of Civil Procedure, would respectfully show unto the three Judge Court the following:

1. Plaintiff-intervenor WISCHKAEMPER is the Plaintiff in Civil Action Number 4-1367 now pending in the United States District Court for the Northern District of Texas, Fort Worth Division, and a copy of the Complaint therein is attached hereto as Exhibit "A."

2. Plaintiff-Intervenor CARTER is the plaintiff in Civil Action CA 3-3636-C now pending in the United States District Court for the Northern District of Texas, Dallas Division, and a copy of the complaint therein is attached hereto as Exhibit "B."

3. Plaintiff-Intervenor JENKINS has filed a motion to intervene in Civil Action 4-1367 now pending in the United States District Court for the Northern District of Texas, Fort Worth Division, and a copy of said motion is attached hereto as Exhibit "C."

4. Each Plaintiff-Intervenor and Intervenors and class plaintiffs-Intervenors and Class Intervenors are

residents of Texas, qualified voters, taxpayers and putative prospective democratic candidates in present and future Democratic primary elections for certain state, district, county and precinct public offices in Dallas and Tarrant Counties, Texas, and the State of Texas.

5. Plaintiffs move the three Judge Court, pursuant to Rule 42(a) of the Rules of Civil Procedure and 28 USC 1392 and 1393, for an order consolidating the above entitled actions now pending before the three-Judge Court and the District Court for the Northern District of Texas, Dallas and Fort Worth Divisions, into one action on the ground that they involve both common questions of law and facts, and the consolidation will avoid unnecessary costs, duplicity of judicial effort, and delay.

6. Plaintiffs-Intervenors and class intervenors, pursuant to Rule 24 of the Rules of Civil Procedure, move the three-Judge Court for an order permitting them to intervene as plaintiffs in this action and to file a complaint in order to assert the claims in such proposed complaint, a copy of which is hereto attached as Exhibit "D" on the grounds that the issues and questions of law and facts are identical and only the offices involved and the amounts of the fees and assessments differ; that the Plaintiffs-Intervenors are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest; that a failure to consolidate or permit intervention will cause three separate three-Judge Courts to determine identical questions of law and fact which will have a statewide effect over Texas election law; that they have a substantial interest in the subject matter of the action; that their interest and the main action have questions of law and fact in common; that they are qualified voters, taxpayers, putative or pros-

pective democratic candidates in the present and future Democratic primary elections for certain state, district, county, and precinct public offices and are unable to pay the unconstitutional filing fees and assessments for the public office they seek, and that their intervention will not to any extent delay or prejudice the adjudication of the rights of the original parties.

7. The plaintiffs move that their cause and their motions be given precedence, advanced on the docket and assigned for hearing immediately; and that an order be entered immediately, temporarily relieving plaintiffs from payment of the challenged fee and assessments until the three-Judge Court has had an opportunity to pass on all the questions raised. As the time for candidates to draw ballot positions for public offices (Texas Election Code 13.17) is scheduled for March 16, 1970, a necessary consequence to the above requested order is that the defendants should extend the date as set by the Court for candidates to draw ballot positions and to have a redrawing for position on such date. A similar procedure was followed by Justice Black in *Matthews v. Little,* 1969, 24 L. Ed. 2d 45, a copy of the unpublished order, together with a clarification of said order, is attached hereto as Exhibit "E." The time for absentee voting on the candidates begins April 13, 1970 and it is necessary that plaintiffs' names be certified by the defendants as bona fide candidates immediately.

Respectfully submitted,

(Signature)
JOSEPH A. CALAMIA
(Signature)
JOHN L. EASHING
608 S.W. Center
El Paso, Texas

Attorneys for
William Pate, Plaintiff
(Signature)
A. L. CROUCH
Attorney for Theodore
Wischkaemper, Plaintiff
and Reubin Jenkins,
Intervenor
109 N. Taylor Street
Fort Worth, Texas

OF COUNSEL:
A. L. CROUCH
Attorney for Theodore
H. Wischkaemper,
Plaintiff and Reubin
Jenkins, Intervenor
H. AVERIL SWEITZER
Attorney for Van Phillip
Carter, Plaintiff

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CIVIL ACTION NO. 4-1367

(Title omitted in printing)

## PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION

1. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343(3). This is a class action on behalf of the plaintiff and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee, which deprives the plaintiff and other members of the class to which he belongs of rights, privileges, and immunities secured by the Constitution of the United States. This is an action for declaratory judgment inititiated pursuant to 28 U.S.C. 2201 and 2202.

2. A three-judge court is being requested, pursuant to 28 U.S.C. 2281 and 2284.

3. This is a lawsuit challenging the constitutionality of the "Rich Man's Primary" in Texas, a device, scheme, or subterfuge designed to eliminate "nuisance candidates (Campbell v. Davenport, 1966, 362 F. 2d 624) who cannot afford to buy their way on to the primary ballot by the payment of substantial qualifying fees beyond the financial ability of the average citizen who may aspire to public office.

4. The plaintiff, Theodore H. Wischkaemper, is a resident citizen and qualified voter of the City of Fort Worth, Tarrant County, Texas, who meets the qualifications for the office of County Judge set forth in Art. 5, Sec. 15, of the State of Texas, which provides

merely that "he shall be learned in the law of the State." On December 15, 1969, plaintiff timely filed his formal application with the Chairman of the Tarrant County Democratic Executive Committee to be a candidate for the office of County Judge of Tarrant County, Texas, in the Democratic Primary Elections to be held on May 2, 1970, and June 6, 1970.

5. The original defendant in this lawsuit was Robert L. Wright, who was sued in his representative capacity as Chairman of the Tarrant County Democratic Executive Committee on December 15, 1969; the citation, or summons, was served on December 17, 1969, ". . . by delivering a copy of this summons along with the complaint to Mr. Robert L. Wright, personally, as Chairman of the Tarrant County Democratic Executive Committee. . . ." The original defendant filed an answer on January 7, 1970, alleging that he was no longer Chairman of said Committee and had not been sued in his individual capacity. The present Chairman of the Tarrant County Democratic Executive Committee is Dr. J. D. Tomme, Jr. On January 12, 1970, plaintiff filed a motion to have Dr. Tomme served with citation, but the Court has not acted on this motion to date; Dr. Tomme has been furnished with copies of all of plaintiff's pleadings as they were filed.

6. The defendant, Dr. J. D. Tomme, Jr., and his successors in office, in the event of other resignations, as Chairman of the Tarrant County Democratic Executive Committee, is the officer authorized by law to accept qualifying fees from candidates for the various local offices whose names will appear on the ballot in the 1970 Democratic Primaries.

7. The plaintiff is informed and believes that the Tarrant County Democratic Executive Committee have enacted a resolution which imposes a qualifying fee

of $6,300.00 for candidates for the office of County Judge in the 1970 Democratic Primaries, and various other qualifying fees too numerous to set forth in this pleading, which range from $50.00 for some offices, up to the incredible figure of $8,900.00 for other offices! Said figures have been assessed mainly on the basis of eight per cent of the salary for the full term of office, which would amount to sixteen per cent of one year's salary for two-year offices, and thirty-two per cent of one year's salary for four-year offices.

8. The plaintiff is further informed and believes that under said resolution of the Tarrant County Democratic Executive Committee imposing exorbitant qualifying fees on candidates for office in the Democratic Primaries to be held on May 2, 1970, and June 6, 1970, persons, who, by reason of their poverty are unable to pay said qualifying fees will not be certified by the defendant Chairman of the Tarrant County Democratic Committee, or *his* successors in office if he decides to resign, as having qualified, and their names will not appear on the ballot for the Democratic Primaries.

9. The qualifying fees which have been set by the resolution complained of are unreasonable, exorbitant, prohibitive, and bear no reasonable relation to any legitimate legislative purpose, said fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to buy their way on to the ballot.

10. In setting qualifying fees at such an unreasonable and outrageously high level, the said Tarrant County Democratic Executive Committee, deprives the plaintiff and all other persons similarly situated of rights, privileges, and immunities secured to them by

the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

11. Although the primary machinery was originally the private affair of the party, it has become absorbed by the State, which has exercised its authority over primary elections with the rules and regulations laid down in cumbersome detail. The party committees are so much controlled by State authority that they are without power to vary on their own initiative the qualifications prescribed for voters, candidates or committee members. *Nixon v. Condon,* 286 U. S. 73.

12. Art. 13.08 of the Texas Election Code authorizes the County Executive Committees of the various political parties to carefully apportion the costs of the primaries among the candidates. "In making the assessment upon any candidate," the statute says, "the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is made." Art. 13.08a limits the qualifying fees in certain counties, to ten per cent of one year's salary for two-year offices and fifteen per cent of one year's salary for four-year offices, a legislative ceiling which should apply uniformly throughout the State, under the equal protection clause of the Fourteenth Amendment.

13. The qualifying fees adopted throughout Texas, for the 1970 Democratic Primary Elections, are so notoriously unequal that they are discriminatory on their face. For instance, the qualifying fee for District Judge in Harris County is $3,900.00, in Dallas County it is $6,720.00, and in Tarrant County it is $8,900.00. Further, the qualifying fees for candidates for the office of County Judge in five neighboring counties are as follows: Denton County, seven per cent of one year's salary, or $770.00; Ellis County, eight per cent

of one year's pay, or $800.00; Parker County, ten per cent of one year's salary, or $970.00; Dallas County, twenty-four per cent of one year's salary, or $5,760.00; and Tarrant County, thirty-two per cent of one year's salary, or $6,300.00. As Mr. Justice Matthews said, in *Yick Wo v. Hopkins,* 118 U. S. 356: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similary circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

14. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

15. Under the Texas statutes, voters wanting as a candidate a man, such as plaintiff, who is unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unconstitutional burden on the voters; the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

16. Plaintiff alleges that there is a clear and imminent threat of irreparable injury amounting to manifest oppression in the event the Federal Courts fail to protect him and others similarly situated from a schedule or system of filing fees so arbitrary, so capricious,

and so discriminatory as to be substantially lacking in safeguards of a procedural nature.

Therefore, premises considered, plaintiff prays that this Honorable Court issue its immediate temporary restraining order, restraining defendant, Dr. J. D. Tomme, Jr. (and his successors in office if he resigns), as Chairman of the Tarrant County Democratic Executive Committee from determining by lot the order of candidate's names on the ballot, on March 16, 1970 (per Art. 13.17a) or from making up the ballot for the first primary (per Art. 13.14) on March 23, 1970, or from enforcing in any manner the schedule of filing fees herein complained of as violating plaintiff's constitutional rights, privileges and immunities, pending a hearing on an interlocutory injunction before a three-judge court. Plaintiff further prays that a three-judge court be expeditiously convened, so that the interlocutory injunction request and the lawsuit on the merits may be heard and considered with all due speed; and so that the questions involved herein may be resolved, by appeal to the United States Supreme Court if necessary, in advance of the primary elections on May 2, 1970 (see *Gong v. Kirk,* 1967, 375 F. 2d 728); and that pending a hearing on the merits an interlocutory injunction be granted, suspending or restraining the enforcement, operation, or execution of any statute of the State of Texas, or any resolution of the Tarrant County Democratic Executive Committee, imposing a property qualification in the form of a filing fee as an unconstitutional precondition to candidacy for public office for plaintiff and others similarly situated; and that upon final hearing hereof, a permanent injunction issue permanently enjoining the imposition of a property qualification in the form of a filing fee as a precondition to candidacy for public office for plaintiff

and others similarly situated. Pending the final determination of this lawsuit, plaintiff especially prays that he, and others similarly situated, be temporarily relieved from the payment of any qualifying fees, or filing fees, and that the time for filing notice of candidacy be extended, since the constitutional question involved is a substantial one, which may require the decision of the entire United States Supreme Court. *Matthews v. Little,* 1969, 24 L. Ed. 2d 45.
March 13, 1970.

Respectfully submitted,

(Signature)
A. L. CROUCH
*Attorney for Plaintiff*

(Verification omitted in printing)

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION CA 3-3635-C

VAN PHILLIP CARTER

vs.

MARTIN DIES JR.
DR. ELMER C. BAUM

## PLAINTIFF'S ORIGINAL PETITION

Now comes Van Phillip Carter, Hereinafter called Plaintiff petitioning for relief from the acts of Martin Dies Jr., Secretary of State of Texas and the State Chairman of the Democratic Party of Texas and petitions for relief as set out in Plaintiff's Prayer on the following grounds:

I.

Plaintiff is a resident of Dallas County, Texas. Defendant, Martin Dies Jr., is the duly appointed Secretary of State of Texas. Defendant, Elmer C. Baum is the Chairman of the Democratic Party of Texas an unincorporated political association.

II.

On February 2, 1970, Plaintiff attempted to file with the Chairman of the Democratic Party of Dallas County for the office of Commissioner of Public Lands. Said request was refused on the grounds that state statute required that the applications be made in Austin, in person to the Executive Committee of the Democratic Party of Texas, by 6:00 p.m., February 2, 1970. Application was then made by telegram to said Defendant Chairman setting out the statutory information required to file for said office and informing them that a notarized copy was on file at the Dallas office. By return telegram February 2, 1970, the Defendant Chairman stated that said application was denied.

III.

Said filing was refused pursuant to state statute requiring that said filing fee be in the amount of $1,000.00, V.A.T.S. Election Code, art. 13.15, and V.A.T.S. Election Code, Act 13.12.

IV.

Plaintiff has substantially complied the statutory requirement of filing except for payment of the filing fee and the effect of such requirement deprives the majority of the right to run for, and therefore to hold office. Specifically it denies Plaintiff the equal protection of the laws required by the 14th Amendment of the United States Constitution in that it effectively denies him the equal opportunity to run for, and therefore hold office. It also sets a property requirement for holding office.

WHEREFORE, Plaintiff prays that Article 13.15 be held unconstitutional and therefore the filing for the Democratic primary of Texas closed by statute February 2, 1970 for the office of State Commission of Public Lands be reopened without filing fee or, in the alternative an injunction be issued ordering the Defendant Chairman to certify Plaintiff's name to the Defendant Secretary of State of Texas to be placed on the Democratic Party's ballot for Primary election of 1970 and that the Defendant Secretary of State of Texas be enjoined to accept such certification and to place Plaintiff's name on said ballots.

(Signature)
H. AVERIL SWEITZER
Fifth Floor, Manor House
1222 Commerce
Dallas, Texas 75202
747-2845

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
CIVIL ACTION NO. 4-1367

(Title omitted in printing)

## PLEA IN INTERVENTION

Comes now Reubin Jenkins, hereinafter styled intervenor, and would respectfully show unto the Court the following:

1. Intervenor is a resident citizen, taxpayer, qualified voter, and duly elected Democratic Precinct Chairman of Election Precinct Number 93, of Fort Worth, Tarrant County, Texas.

2. The jurisdiction of this court is invoked pursuant to 42 U.S.C. 1983 and U.S.C. 1343(3). This is a class action, within the scope of Rule 23 of the Federal Rules of Civil Procedure, on behalf of intervenor and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee which deprives intervenor and other members of the class or classes to which he belongs of rights, privileges and immunities secured by the Constitution of the United States of America.

3. This is an action for a declaratory judgment initiated pursuant to 28 U.S.C. 2201 and U.S.C. 2202. A three-judge district court is being requested, as provided in U.S.C. 1973, from which an appeal will lie directly to the United States Supreme Court.

4. The plaintiff in this lawsuit is Theodore H. Wischkaemper, a resident of Fort Worth, Tarrant County, Texas, who has timely filed his application to be a candidate for the office of County Judge of said

County in the Democratic Primary Election set by law for May 2, 1970.

5. The defendant in this lawsuit is the Hon. Robert L. Wright, Chairman of the Tarrant County Democratic Executive Committee, and his successors in office. The Chairman of the Tarrant County Democratic Executive Committee is the officer authorized by law to accept qualifying fees, or filing fees, from candidates for the various offices to appear on the ballot in the Democratic Primary Election to be held in Tarrant County, Texas, on May 2, 1970.

6. The plaintiff filed his Original Petition in this lawsuit, *pro se,* on December 15, 1969; and the Hon. Robert L. Wright, then Chairman of the Tarrant County Democratic Executive Committee, after being duly served with citation on December 17, 1969, filed his Original Answer on or about January 6, 1970.

7. On January 13, 1970, plaintiff filed his "First Amended Petition in this lawsuit, *pro se,* alleging that "the said Robert L. Wright resigned as Chairman of the Tarrant County Democratic Executive effective January 1, 1970. And that the Honorable Court make as binding on Dr. J. D. Tomme, who assumed that office on Jan. 1, 1970, plaintiff's original petition and citation servised (sic) on Robert L. Wright by the U. S. Marshal's office on December 17, 1969, as though servised (sic) on Dr. J. D. Tomme." Both Robert L. Wright and his successor in office, Dr. J. D. Tomme, have been furnished with copies of both the plaintiff's Original Petition and his "First Amended Petition," according to a certificate signed by the plaintiff at the bottom of the pleading filed on January 13, 1970.

8. Intervenor is informed and believes that the Tarrant County Democratic Executive Committee adopted

a schedule of qualifying fees for candidates who want their names to appear on the ballot in the Democratic Primary Election set for May 2, 1970; said fees, ranging in amount from $50.00 to $8,900.00, have been assessed at approximately eight per cent of the total amount of the salary of the office for the entire term. For two year offices, the assessment would thus be approximately sixteen per cent of one year's pay; and for four-year offices' such as County Judge, the assessment would be approximately thirty-two per cent of one year's pay. The fee actually assessed for the office of County Judge is $6,300.00, an amount which plaintiff was unable to pay.

9. The schedule of qualifying fees which defendant, Dr. J. D. Tomme, is attempting to enforce are exorbitant, excessive, and unreasonable, and bear no relationship to any legitimate legislative purpose, such fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay the fees demanded.

10. The intervenor is informed and believes that plaintiff and other persons, who, by reason of their financial condition or outright poverty, are unable to pay said exorbitant qualifying fees will not be permitted to participate in the drawing for places on the ballot, set by Art. 13.17a for March 16, 1970, by the defendant, Dr. J. D. Tomme.

11. The intervenor is also informed and believes that the said defendant, Dr. J. D. Tomme, will not certify the names of those candidates who are unable to pay said exorbitant qualifying fees to the primary committee, when it meets on March 23, 1970, to make up the ballot for the May 2, 1970 primary, pursuant to Art. 13.14; and that said committee will actually leave

the names of such persons, including the plaintiff, from the official ballot to be used in said primary election.

12. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

13. Under the Texas statute, voters wanting as a candidate a man, such as plaintiff, who is unwilling or unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unconstitutional burden on the voters. Intervenor hereby asserts that the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

14. In States such as Texas, where the primary election is in a real sense the only true election, the vote at the final election is merely a formal flourish, except in rare cases. It is common knowledge that whoever receives the Democratic nomination to an office in Tarrant County, Texas, is elected to the office in the General Election. Sixty candidates for the May 2 Democratic primary have paid filing fees for 39 positions, while only 9 Republican candidates have paid filing fees for 8 positions in the Republican primary. There is no Republican seeking the office of County Judge in Tarrant County this year, so that the Democratic nomination for the office which plaintiff seeks is tantamount to election.

15. Intervenor believes that his vote has been impaired, lessened, diminished, diluted, and destroyed

by the fact that his choice on the primary ballot (and thereby the election itself) is limited to those who are willing and able to pay an exorbitant and prohibitive qualifying fee; and that he has been denied his constitutional right to participate in the elective processes by reason of the fact that defendant, Dr. J. D. Tomme, is attempting to enforce an unconstitutional property qualification on candidates for public office in the Democratic Primary Election, which is an integral part of the procedure for electing public officials in Texas.

16. Texas has delegated its function of conducting primaries to the political parties, and in this respect the party's action is the action of the State.

17. The pertinent provisions of the Texas Election code have been amended by the Texas Legislature since November 1, 1964, or have been reenacted since that date. The resolution of the Tarrant County Democratic Executive Committee, adopting the schedule of qualifying fees herein complained of, was adopted on February 9, 1970.

18. A qualifying fee for the office of County Judge is contrary to and in violation of the Constitution of the State of Texas, in that it requires from plaintiff, as a candidate for said office a property qualification (i.e., possession of $6,300.00 in cash) in addition to the qualification set forth in the State Constitution, Art. 5, Sec. 15, which provides merely that "he shall be learned in the law of the State."

19. In addition to plaintiff, there are at least three other candidates who are being denied a place on the Democratic Primary ballots because of their inability to pay qualifying fees: Van Phillip Carter, candidate for State Land Commissioner ($1,000.00 fee); and Mrs. Vernon R. "Dick" Winters and Pearce Scott,

the only two candidates who filed for Public Weigher ($50.00 fee). Candidates for Public Weigher are customarily not assessed a filing fee in Tarrant County, because the job carries no salary. But Mr. Scott is a Negro. Enough said. No filing fee, no public weigher.

20. Intervenor is informed and believes that the schedule of Tarrant County qualifying fees was not prepared in the statutory manner, even though statutes relating to the financing of primaries must be carefully construed and strictly followed. The expenses, instead of being carefully estimated and apportioned by the entire Tarrant County Democratic Executive Committee, "in such manner as in their judgment is just and equitable," as contemplated by Art. 13.07a and 13.08 of the Texas Election Code, were actually estimated and apportioned by a clandestine illegal committee of three intruders, who wrongfully attempted to usurp the discretionary judicial functions of the entire Tarrant County Democratic Executive Committee of more than one hundred and fifty members duly elected by the voters of Tarrant County in the various voting precincts. The attempt of the Tarrant County Democratic Executive Committee to ratify the ultra vires act of the committee of intruders was ineffective and void. It is now impossible for the Tarrant County Democratic Executive Committee to reconvene and estimate and apportion the expenses of the election on the second Monday in February, since that date is already passed; and that, therefore, no legal schedule of filing fees has ever been adopted for Tarrant County for the 1970 Democratic Primary Election; so that, no matter what the courts decide as to the legality or constitutionality of qualifying fees for the rest of the State, all filing fees, or qualifying fees for Tarrant County for the year are null and void under State law,

as well as under the State and Federal Constitutions, and should be so held by the courts.

21. Intervenor is informed and believes that the sums of money demanded and received by the present Chairman of the Tarrant County Democratic Executive Committee of candidates desiring a place on the ballot in the party primaries are grossly in excess of the amount sufficient to cover the reasonable and necessary expenses involved. It has been customary for said fees to overestimated to such an extent that rebates of up to forty per cent are not uncommon in Tarrant County after the legitimate expenses of the primaries have been paid. As a matter of fact, the County Democratic Chairman has been twice sued by candidates claiming that he has wrongfully and unlawfully expended and kept several thousand dollars and this after substantial rebates! Overassessment of filing fees is a wicked device, which, like the poor, we have with us always.

Wherefore, premises considered, intervenor prays that a three-judge Federal District Court be impanelled to hear plaintiff's cause of action, together with this Plea in Intervention; and, that pending such hearing and the appeal thereof to the United States Supreme Court, a temporary restraining order, an interlocutory injunction and a permanent injunction, or such of them as may be appropriate, issue enjoining the holding of the Democratic Primary Election now set for May 2, 1970, until such time as defendant J. D. Tomme and other Democratic Party officials afford a reasonable opportunity to apply for positions on the Democratic Primary ballots any and all persons who cannot afford to pay the qualifying fees which have been demanded as a precondition to candidacy for public office. Intervenor also prays that the drawing for

places on the ballot be restrained and enjoined as well; and that injunctive relief be immediately granted compelling the Democratic Party of Texas and of Tarrant County to refrain from imposing qualifying fees as a condition to filing for public office; and for such other relief in law and in equity to which he may show himself justly entitled.

THEODORE H. WISCHKAEMPER
on behalf of himself
and all others similarly situated,
plaintiff

vs. PLEA IN INTERVENTION

ROBERT L. WRIGHT
Chairman of the Tarrant County
Democratic Executive Committee
and his successors in office

(Verification omitted in printing)

Respectfully submitted,

(Signature)
A. L. CROUCH
*Attorney for Intervenor*

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EP-70-CA-7

(Title omitted in printing)

## PLAINTIFF-INTERVENORS AMENDED COMPLAINT

Comes now the Plaintiffs, THEODORE H. WISCH-KAEMPER, VAN PHILLIP CARTER and REUBIN JENKINS, and file this their pleadings and Three-Judge application of intervenor and complaining of defendants, GEORGE A. McALMON, JR., and DR. J. D. TOMME, JR., as Chairmen of the County Democratic Executive Committee of El Paso and Tarrant Counties, Texas respectively; the Democratic Primary Committee of El Paso and Tarrant Counties, Texas, respectively; the Democratic Primary Committee for the State of Texas; Preston Smith as Governor of the State of Texas; Crawford Martin, as Attorney General of the State of Texas; MARTIN DIES, JR., as Secretary of State of Texas; ELMER C. BAUM, as Chairman of the State Democratic Party of Texas; the State of Texas, a body politic, the County Democratic Executive Committee of El Paso and Tarrant Counties, Texas respectively, and the Texas Democratic Executive Committee and for cause of action would respectfully show unto the three-Judge Court the following:

The defendants are sued in their representative capacities as elected officers of the State of Texas and of the Democratic Party in the State of Texas and the respective Counties within the State of Texas. The various official individuals sued herein are charged with

duties in connection with State and County primary and general elections and the laws.

1. Plaintiffs and class plaintiffs allege and reallege and hereby incorporate and adopt by reference all the law and allegations set forth in Plaintiff Pate's Second Amended Original three-Judge Application and Complaint, except those facts in regard to each plaintiff intervenor as set out below.

2. Jurisdiction of this action is conferred upon the Court under the provision of the Civil Rights Act, 42 USC 1983 and 1988 and also under 28 USC 1343(a), 2281 and 2283. This is an action for declaratory judgment initiated pursuant to 28 USC 2201 and 2202, for preliminary, interlocutory, permanent and mandatory injunctions and temporary restraining orders to prevent irreparable damage to plaintiffs, and for further and different relief as may be appropriate in equity and law.

3. This is a class action on behalf of the plaintiffs and all other people similarly situated in the State of Texas to restrain the enforcement of Texas statutes and declaring them unconstitutional and requesting temporary restraining orders and injunctive relief. Plaintiffs and class plaintiffs are all qualified voters, taxpayers, citizens of Texas, and the various Texas counties, and putative or prospective democratic candidates in present and future Democratic primary elections for certain state, district, county and precinct public offices within the State of Texas. Such persons are so numerous as to make it impractical to bring them all before the Court; the claims of the plaintiffs are typical of the claims of such persons, and the plaintiffs will adequately and fairly represent the interest of such persons, and there are common questions of law and fact common to all plaintiffs and such persons.

4. The plaintiff Wischkaemper is a resident and qualified voter of Tarrant County, Texas, who is qualified for the office of County Judge of Tarrant County, Texas, for which public office plaintiff Wischkaemper intends to run and is an announced candidate for, in the May 2, 1970 Democratic primary election and plaintiff intends to run and will run for the office of County Judge of Tarrant County, Texas in future precinct elections thereafter and to be a voter in such elections. The Tarrant County, Texas Democratic Executive Committee has filing fee or assessment of $6,300.00 for the office of County Judge of Tarrant County, Texas for the 1970 Democratic primary elections. Plaintiff Wischkaemper is unable to pay and will not pay the filing fee or assessment of $6,300.00 set for the public office of County Judge of Tarrant County, Texas, thus depriving him of his right to vote for himself and to seek nomination to public office in Democratic primaries. Plaintiff Wischkaemper hereby adopts by reference pleadings contained in Exhibit "A" to the motion to intervene.

5. The plaintiff Carter is a resident and qualified voter of Dallas County, Texas, who is qualified for the office of Commissioner of the General Land Office, for which public office plaintiff Carter intends to run and is an announced candidate for in the May 2, 1970 Democratic primary election, and plaintiff intends to run and will run for such public office in future primary elections thereafter and to be a voter in such elections. Article 13.15 Texas Election Code sets a filing fee of $1,000.00 for the office of Commissioner of the General Land Office in the primary election. Plaintiff Carter is unable to pay and will not pay the filing fee of $1,000.00 set for the above public office, thus depriving

him of his right to vote for himself and to seek nomination to public office in Democratic primaries.

6. Plaintiff Jenkins is an intervenor and is a qualified voter of Tarrant County, Texas, and hereby adopts by reference his pleadings contained in Exhibit "C" to the motion of intervention.

7. This action arises under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the Freedom of Assembly Clause of the First Amendment to the United States Constitution, which secures certain rights, privileges and immunities of all citizens, as the defendants have deprived the plaintiffs of the right to an equally effective voice in the election process by an invidious discrimination by imposing upon those seeking to have their names placed upon the ballot as candidates for certain state, district, county, and precinct public offices in the Texas County and statewide Democratic Primary Elections set for May 2, 1970 and for future elections, exorbitant, unreasonable, arbitrary, capricious, irrelevant, and outrageously high filing fees or assessments which bear no reasonable relation to any legitimate legislative purpose and such filing fees are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. The filing fees or assessments are so high they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay or who fail or refuse to pay the filing fees or assessments imposed by the various Democratic Executive Committees. These filing fees also prevent qualified voters from voting for those persons whose candidacy is prevented by such filing fees.

Furthermore, the introduction of wealth as payment of a fee as a prerequisite or measure of a citizen's or

voter's qualifications to have his name placed on the primary ballot or to vote, is to introduce a capricious or irrelevant factor, and the requirement of fee paying in this context as a condition to be a candidate or voter in the various Democratic primaries, causes an invidious discrimination that per se violates the Equal Protection Clause and furthermore, the Texas Statutes under attack permit and provide an invidious classification discrimination between various candidates for different offices by having different filing fees for the various candidates.

The various Democratic Executive Committees have deemed that the length of a prospective candidate's pocketbook alone will be made the yardstick as to whether his name appears or does not appear on the primary ballot. It is a fundamental rule of human nature and political behavior that high filing fees for public office tends to keeps the "ins" in and the "outs" out. Furthermore, defendants will effectively deprive the plaintiffs of their right to vote, for the right to run for public office is a correlative of the right to vote.

The defendants have denied the plaintiffs and class plaintiffs their fundamental political right of freedom of association (political association) for the purpose of voting and being nominated as candidates for public office in the democratic primaries in violation of the First Amendment, by reason of the Equal Protection and Due Process clauses of the Fourteenth Amendment, by an invidious discrimination through the establishment of filing fees as a prerequisite to running for nomination to public office.

8. Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, are void and unconstitutional as they violate the equal protection and due process clauses of the Fourteenth Amendment, and the Freedom of As-

sembly clauses of the First Amendment to the United States Constitution, in that they impose and permit filing fees or assessments for candidates for public offices in the democratic primary election to be held May 2, 1970 and in future primary elections, upon persons who by reason of their lack of funds or poverty, are unable to pay said filing fees or assessments, or fail or refuse to pay said filing fees or assessments. The Chairmen of the various Democratic Executive Committees will not accept candidate's applications for official, unless a deposit of $50.00 is made and the assessment made by the Democratic Executive Committees are paid timely or the fixed filing fee is paid. The ex-officio chairman of the democratic party committee and the democratic party committee will not place any person's names on the official democratic primary ballot who has not filed an application for a place on the ballot along with the prerequisite of paying the deposit of $50.00 and the assessment as made by the democratic executive committee. The filing fee or assessment by the various Democratic executive committees and by Article 13.15 Texas Election Code are exorbitant, arbitrary, capricious, irrelevant, unreasonable, outrageously high, and bear no reasonable relation to any legitimate legislative purpose and are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. In setting filing fees and assessments at such unreasonable and outrageously high level, and permitting some candidates to file in the democratic primary by merely paying a fixed fee, as for State legislators, the fee of $150.00, the statutes in question and the prospective resolutions and resolution of the various Democratic Executive Committees making assessments under Article 13.08, Texas Election Code, deprive the plaintiffs and all other persons similarly situated, of rights, privileges and immunities

secured by the equal protection and due process clauses of the 14th Amendment, and the freedom of assembly clause of the First Amendment to the United States Constitution, and established an invidious classification discrimination.

9. The plaintiffs and all other persons similarly situated are unable to and refuse to pay the filing fees and assessments imposed by the Texas statutes under attack and the assessments to be made and made by the various Democratic Executive Committees and the State of Texas under the Texas election code which establishes fixed fees for some candidates, and therefore, they are deprived of their right to seek nomination to public office, to seek public office, and to the right to vote in the 1970 and in all future primary elections.

WHEREFORE, plaintiffs pray for declaratory, injunctive relief, and for temporary restraining orders as follows:

A. That this complaint and application be given precedence, and be advanced on the docket and assigned for a hearing at the earliest practicable day.

B. That this Court order this matter litigated as a class action.

C. That this Court immediately restrain and enjoin the enforcement of the prospective and actual resolutions of the various Democratic Executive Committees imposing filing fees or assessments against the plaintiffs or similarly situated persons as a prerequisite to filing and application for a place on the ballot for public office in the various Democratic Primary Elections set for May 2, 1970 and all future primary elections.

D. That this Court immediately order the defendants to place plaintiffs' names and the names of other

similarly situated persons on the respective official ballots in the Democratic Primary election of May 2, 1970 and all future primary elections without the payment of the filing fees or assessments for the office to which the individual plaintiffs seek nomination to as reflected herein, and for other public offices, in order that persons who are unable to afford the payment of outrageously high and unconstitutional filing fees or assessments may place their names in nomination for public offices in the present and future democratic primaries in Texas, or who fail or refuse to pay any filing fees.

E. That this Court immediately restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committees imposing filing fees or assessments against pay person who seeks public office and who is unable to afford the payment of outrageously high and unconstitutional filing fees or assessments, or who fails or refuses to pay any filing fee.

F. That Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, be declared void and unconstitutional.

G. That this Court grant relief in that the defendants be ordered immediately to place plaintiffs' names upon the ballot as candidates for the public office they individually seek, so that voters will have the right to hear from the plaintiffs as candidates in the democratic primaries, and to vote for them in all future primary elections.

H. That this Court immediately issue a temporary restraining order directed to the Chairmen of the various Democratic Executive Committees requiring them to certify to and file with the proper Texas County Clerk, or other officer, the plaintiffs' names as candi-

dates for the office they seek individually, and to place plaintiffs' names on the official ballot for the Democratic primary set for May 2, 1970 without the payment of their assessments or fixed fees in order to prevent irreparable damage to plaintiffs and class plaintiffs and that such hearing and ruling be had immediately.

I. That the plaintiffs have the cost of their action against any defendants hereto and that plaintiffs have such other and further relief as to the Court shall seem just and proper.

Plaintiffs will amend their complaint so as to add any other party defendants or party plaintiffs as may be necessary and proper, and to allege other facts and seek other relief as the facts and the law may warrant.

(Signature)
A. L. CROUCH, Attorney for Plaintiff-Intervenors
109 N. Taylor Street, Fort Worth, Texas

CALAMIA & FASHING
Attorneys for the Plaintiffs and of counsel for the plaintiff-intervenors
608 Southwest Center
El Paso, Texas 79901

(Signature)
JOHN L. FASHING

OF COUNSEL:

A. L. CROUCH, Attorney for T. H. Wischkaemper Plaintiff and REUBIN JENKINS, Intervenor

H. AVERIL SWEITZER, Attorney for Van Phillip Carter, Plaintiff

SUPREME COURT OF THE UNITED STATES

No. _____, October Term, 1969

ETHEL MAE MATTHEWS, ET AL.,
*Appellants,*

vs.

J. J. LITTLE, CITY CLERK OF THE CITY OF ATLANTA

## ORDER

UPON CONSIDERATION of the application of counsel for the appellants for an injunction prohibiting the holding of an election and to restrain the collection of qualifying fees, said application is denied, but for the reasons set forth in the accompanying opinion.

IT IS ORDERED that the appellee in the above-entitled cause be, and he hereby is, restrained and enjoined from collecting or requiring from these appellants the payment of the qualifying fees established by the Atlanta, Georgia, Ordinance of August 26, 1969, pending the timely filing and disposition of an appeal in this case. In the event a timely appeal is not perfected, or this Court determines that said fees are not invalid, nothing herein shall prevent appellee from requiring the payment of these fees by appellants, if they are candidates in the election now scheduled for October 7, 1969.

IT IS FURTHER ORDERED that because the time for filing notices of candidacy expires on September 10, 1969, the City of Atlanta shall extend said deadline until September 16, 1969.

Nothing herein shall be interpreted as requiring or

prohibiting any postponement of the aforesaid election by the City.

(Signature)
HUGO L. BLACK
Associate Justice of the Supreme Court of the United States

Dated this 9th
day of September, 1969.

A true copy, JOHN F. DAVIS,
Test:
Clerk of the Supreme Court of the United States

## ANSWER TO REQUEST FOR CLARIFICATION OF ORDER

1. Justice Black's order extends to only those persons who are parties to the case.

2. The case was brought as a class action and was apparently treated as such by the Court below.

3. If there is a dispute as to whether a particular individual, that is a potential candidate, is a member of the class and covered by the order, it is up to the District Court to decide these questions in the first instance.

4. Any party aggrieved by a decision of the District Court can, of course, seek relief from Justice Black as Circuit Justice.

5. Justice Black had hoped that this need for clarification would not arise since, if the Atlanta officials feel strongly that the filing fees were constitutional and absolutely necessary to the holding of the election, they could always postpone the election until the full Court has had an opportunity to decide the issue.

SUPREME COURT OF THE UNITED STATES

October Term, 1969

Ethel Mae Matthews et al.

*Appellants*

vs.

J. J. Little, City Clerk of the
City of Atlanta

Application for Injunction

[September 9, 1969]

MR. JUSTICE BLACK, Circuit Justice.

Appellant Ethel Mae Matthews is a prospective candidate for alderman in an Atlanta, Georgia, municipal election now scheduled for October 7. Appellant Julia Shields is a duly qualified Atlanta voter. Both appellants claim that their constitutional and statutory rights are abridged by the exclusion of potential candidates for local offices who cannot afford the filing fees fixed by an Atlanta municipal ordinance of August 26, 1969. They challenge the ordinance on the grounds that fees sought to be exacted violate the Equal Protection Clause of the Fourteenth Amendment and § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973e (1964 ed., Supp. I). The constitutional question appears to me to be a substantial one which calls for decision by the full Court. This question is all the more serious because a three-judge district court decided in this case that the collection of the filing fees fixed by the ordinance does unconstitutionally deny equal protection of the law. The city election is presently set for October 7, and although this Court meets October 6, we will not have time to consider and decide the merits of the constitutional claim before the election

is to be held. The result is that appellants cannot have their case decided unless some provision is made to take care of the problem. A court-ordered postponement of the election could have a serious disruptive effect. On the other hand the refusal or inability to pay fees deemed unconstitutional might keep serious candidates from running, thus depriving Atlanta voters of an opportunity to select candidates of their choice. Both of these undesirable consequences should be avoided if possible, and to some extent they can be. This can be done by temporarily relieving appellants from payment of the challenged fees until the entire Court has had an opportunity to pass on all the questions raised. Should the appellants' claims be accepted by the Court, they would then never be required to pay the challenged fees. Should their claims be rejected, they would be subject to the fees. Because the time for candidates to file notice of their candidacy is scheduled to expire on September 10, 1969, a necessary consequence to this order is that the city should extend the date for candidates to file notice of their candidacy at least until Tuesday, September 16, 1969. This disposition permits Atlanta to proceed with the election as now scheduled. In the alternative, Atlanta officials could decide of their own accord to postpone the municipal election until after this Court has had an opportunity to hear and decide the issues involved.

*It is so ordered.*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

## MOTION FOR LEAVE TO INTERVENE

TO THE HONORABLE COURT:

Come now Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien and move for leave to intervene as party Plaintiffs and for leave to file intervenors' complaint attached hereto. This motion is filed pursuant to Rule 24 (a), (2), F.R.C.P., or in the alternative Rule 24 (b) (2). As grounds for this action applicants state:

1. Intervenors sue in their own behalf and as representatives of a class of persons similarly situated more fully set forth in the complaint. They are registered voters qualified to vote in the Democratic primary for the office of County Commissioner of Precinct 4, and for other offices.

2. That they are poor persons like candidate William Pate and are members of his class.

3. They desire the opportunity to cast their votes in the Democratic primary for Plaintiff William Pate, candidate for the office of County Commissioner of Precinct 4, and members of his class.

4. Unless relief is granted, intervenors will not be allowed to vote for William Pate because Defendant George McAlmon has and threatens to continue to impose as a condition to candidate Pate's appearing on the ballot payment of an unreasonable, arbitrary, and outrageously high filing fee and assessment which candidate William Pate and members of his class cannot afford to pay.

5. That the filing fees and assessments imposed upon candidate William Pate deny intervenors and their class freedom of assembly guaranteed by the First Amendment, equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, and the right to vote for the candidate of their own choice because of an invidious discrimination against candidate William Pate, and members of his class, based solely on wealth. By reason of such discrimination intervenors are denied the right to vote for candidates who by reason of their similar economic background would best represent intervenors economic condition and interests.

6. That intervenors represent interests which have not been adequately represented by present Plaintiffs, and that adverse decision in the present case will significantly affect the rights and interests of intervenors and their class.

7. That intervenors' claim presents questions of laws and fact common to the main action.

8. That there is attached hereto a complaint setting forth the claims for which intervention is sought.

WHEREFORE, the applicants pray that this motion be granted, and that intervenors' complaint be filed.

(Signature)
FRED WELDON
FRED WELDON AND STUART R. ABLESON,
Attorneys for Intervenors
By Fred Weldon
119 N. Stanton, Rm. 215
El Paso, Texas 79901
544-3022

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
OF THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

## PLAINTIFF INTERVENORS' COMPLAINT

TO THE HONORABLE COURT:

Come now Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien and for cause of action would respectfully show the Court the following:

I.

Jurisdiction is conferred upon the Court under 42 U.S.C. §1983 and 1988 and also pursuant to 28 U.S.C. §1343 (3) & (4), 2281 and 2284. Declaratory judgment is sought under 28 U.S.C. §2201 and 2202. The purpose of this action is obtain injunctive and declaratory relief and to redress deprivation of the federal constitutional right to vote.

II.

Plaintiff intervenors, Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien are registered voters, qualified to vote in the El Paso County, Texas Democratic Primary elections set for May 2, 1970. They desire to cast their votes in said primary, and future primaries, for William Pate for the office of County Commissioner of Precinct 4, and in future primaries for candidates of the class represented by Pate.

III.

Plaintiff intervenors are poor persons unable or unwilling to pay the filing fees assessed against Wil-

liam Pate by Defendants, which William Pate has himself been unwilling or unable to pay, and for this reason Plaintiff intervenors will not be able to vote for the candidate of their choice.

IV.

Deprivation of the right to vote by discriminating against would-be candidates on the sole basis of wealth, denies Plaintiff intervenors due process and the equal protection of the laws as guaranteed by the 14th Amendment to the United States Constitution.

V.

Prevention of William Pate's candidacy because of his lack of wealth prevents Plaintiff intervenors from voting for the candidate who by reason of his economic background can best represent Plaintiff intervenors' political views and economic interest. This denies Plaintiff intervenors' freedom of association as guaranteed by the First Amendment to the United States Constitution.

VI.

The high filing fees assessed by Defendants against William Pate are exorbitant, unreasonable and unrelated to any legitimate legislative purpose.

VII.

This is a class action brought under Rule 23, F.R. C.P. by Plaintiff intervenors on behalf of themselves and all other people similarly situated and as members of U.N.I.O.N., Incorporated. U.N.I.O.N. is The Neighborhood Association of Canutillo, Texas, and a Texas non-profit corporation membership of which are poor people of Canutillo, Texas, which lies in County Commissioner Precinct 4. Plaintiff intervenors and class

Plaintiff intervenors are all poor qualified voters, tax payers and citizens of El Paso County, Texas, and putative or prospective Democratic voters in present and future Democratic primary elections for district county, and precinct public offices in El Paso County, Texas. Such persons are so numerous as to make it impracticable to bring them all before the Court; the claim of the Plaintiff intervenors is typical of the claims of such persons, and the Plaintiff intervenors will adequately and fairly represent the interests of sueh persons, and there are common questions of law or fact to all Plaintiffs and such persons.

VIII.

This complaint is based upon state action and Defendants agency for the State of Texas in administering Art. 13.08, Texas Election Code.

IX.

Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16, Texas Election Code, are void and unconstitutional because they violate the equal protection and due process clauses of the 14th Amendment and the freedom of assembly clauses of the First Amendment to the U.S. Constitution, by imposing and permitting exorbitant and unreasonable filing fees or assessments upon candidates for public offices in the Democratic Primary Election to be held May 2, 1970, and in future primary elections, upon persons who by reason of their lack of funds or poverty, are unable to pay said filing fees or assessments or fail or refuse to pay such filing fees or assessments.

X.

Defendant George McAlmon is a resident and citizen of El Paso County, Texas, and is duly elected chairman

of the County Democratic Executive Committee of El Paso County, Texas. Defendant McAlmon is the Chairman of the County Democratic Executive Committee and the Democratic Party Officer with whom applicants for a place on the Democratic Primary ballot for the present primary Democratic election set for May 2, 1970 and future Democratic Primary Elections shall be filed in the case of district offices included wholly or partially within El Paso County, Texas and County and Precinct offices within El Paso County, Texas. Defendant McAlmon is sued individually and in his representative capacity as chairman of the County Democratic Executive Committee, El Paso County, Texas, as the ex officio chairman of the Democratic Primary Committee.

XI.

The Defendants, Preston Smith, Crawford Martin, and Martin Dies, Jr., are sued in their representative capacities as elected officers of the State of Texas. The various official individuals sued herein are charged with duties in connection with state and county primary and general elections. The Governor of the State of Texas, PRESTON SMITH, and the Attorney General of the State of Texas, CRAWFORD MARTIN, are also sued so that they will receive at least five days notice of hearings pursuant to 28 U. S. C. 2284 (2).

WHEREFORE, Plaintiffs pray for declaratory, injunctive relief, and for temporary restraining order as follows:

A. That this Court (single judge) immediately notify the Chief Judge of the Fifth Circuit that this application for injunctive and other relief has been presented to this Court in accordance with the procedure for a three Judge court under 28 U.S.C. 2281 and 2284,

so that said Chief Judge of the Fifth Circuit can designate two other judges to serve as members of this Court to hear and determine this action or proceeding.

B. That this complaint and application be given precedence and be advanced on the docket and assigned for a hearing at the earliest practicable day.

C. That this Court order this matter litigated as a class action.

D. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against Plaintiff William Pate or similarly situated persons as a prerequisite to filing and application for a place on the ballot for public office in the Democratic Primary Election set for May 2, 1970, and all future primary elections.

E. That this Court order the Defendants to place Plaintiff William Pate's name and the names of other similarly situated persons on the official ballot in the Democratic Primary Election of May 2, 1970 and all future primary elections without the payment of the filing fees or assessments for the office of County Commissioner of Precinct 4, El Paso County, Texas, and for other public offices; in order that persons who are unable to afford the payment of outrageously high and unconstitutional filing fees or assessments may place their name in nomination for public office in the present and future democratic primaries in El Paso County, Texas or who fail or refuse to pay any filing fees, and in order that Plaintiff intervenors and members of their class may exercise their right to vote for Plaintiff William Pate and members of his class in the present and in future democratic primaries.

F. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against any person who seeks public office who is unable to afford the payment of outrageously high and unconstitutional filing fees or assessments, or who fails or refuses to pay any filing fee.

G. That Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16, Texas Election Code, be declared void and unconstitutional.

H. That this Court grant relief in that the Defendants be ordered to place Plaintiff William Pate's name upon the ballot as a candidate for County Commissioner Precinct 4 of El Paso County, Texas so that voters will have the right to hear from the Plaintiff as a candidate in the democratic primary, and to vote for him in all future primary elections.

I. That this Court issue a temporary restraining order directed to the Chairman of the El Paso County Democratic Executive Committee requiring him to certify to and file with the El Paso, Texas County Clerk, Plaintiff William Pate's name as a candidate for County Commissioner Precinct 4, El Paso County, Texas, and to place his name on the official ballot for the Democratic general primary set for May 2, 1970, without the payment of his assessment of $1,424.60 in order to prevent irreparable damage to plaintiff intervenors and class plaintiff intervenors and that such hearing and ruling be expedited.

J. That the plaintiff intervenors have the cost of their action against any defendant hereto and such other and further relief as to the Court shall seem just and proper.

(Signature)
FRED WELDON
FRED WELDON AND STUART R. ABELSON,
Attorneys for Intervenors,
By Fred Weldon
119 N. Stanton, Rm. 215
El Paso, Texas 79901
544-3022

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

## BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

TO THE HONORABLE COURT:

Come now the plaintiff intervenors in the above styled and numbered cause, and in support of their motion for leave to intervene would show the Court the following argument and authorities:

I.

Applicants are proper Plaintiffs in this suit because they seek to vindicate the power and authority of their own ballots. The right to vote is a fundamental political right preservative of all rights and can become "illusory if the right to vote is undermined." *Wesberry v. Sanders,* 11 L.Ed. 2d 481. Here the applicant plaintiff intervenors desire to assert their right to make common cause with candidate William Pate, a man without means like themselves, and to vote effectively by casting their ballots for the candidate of their choice who by reason of similar economic background expresses and represents applicants' political beliefs and views. These two overlapping rights, the right to associate for the advancement of political beliefs and the right to cast votes effectively have been recognized by the Supreme Court. *Williams v. Rhodes,* 1968, 21 L.Ed. 2d 24, 31. Moreover, the unreasonable exclusion of a candidate for public office, where other candidates are given places on the ballot, denies the voters who might wish to vote for the excluded candidate the equal pro-

tection of the laws. *Williams v. Rhodes,* 1968, 21 L.Ed. 2d 24, 29.

II.

The integrity of the electoral process has been traditionally safeguarded by suits of voters, not of candidates. Voters have sued to protect the right to vote from racial discrimination; *Smith v. Allwright,* 1944, 321 U.S. 649; *Terry v. Adams,* 1953, 345 U.S. 461; and economic discrimination; *Harper v. Virginia State Board of Education,* 1966, 383 U.S. 663; *Cipriano v. Houma,* 1969, 28 L.Ed. 2d 647. The recent case of *Williams v. Rhodes,* supra, involving the presidential candidacy of George Wallace, was brought by voters and decided on the ground of the right to vote and the right of voters to assemble, through the medium of a political party, with their candidate. *Mathews v. Little,* a case involving filing fees for aldermanic elections in Atlanta, Georgia, included Julia Shields, a duly qualified voter, as a party plaintiff. Justice Black found the high filing fees there deprived Atlanta voters of an opportunity to select candidates of their choice, 24 L. Ed. 2d 45 (1969), opinion in chambers.

III.

Applicants' motion for leave to intervene meets the requirements of Rule 24(a) or, in the alternative of Rule 24(b). Applicants' interest is the fundamental political right to vote; this right cannot be protected without access of candidates to the ballot, and existing plaintiffs represent principally the rights of candidates, not the rights of voters. In addition, applicants' claim presents common questions of law or fact with that of Plaintiff William Pate and his class. The Federal Rules are to be construed liberally to secure the just, speedy and inexpensive determination of every

action, F.R.C.P. 1. Admitting voters as party plaintiffs to a suit brought by a candidate avoids the necessity of an additional suit by the voters themselves. Considerations of judicial administration create a public interest "especially in these explosive days of every increasing dockets, of having a disposition at a single time of as much of the controversy to as many of the parties as is fairly possible consistent with due process. *Atlantis Development Corporation v. United States,* 1967, 379 F. 2d 818 (Brown, Circuit Judge, 5th Circuit).

Respectfully submitted,
(Signature)
FRED WELDON AND STUART R. ABELSON
Attorneys for Intervenors
By Fred Weldon
119 N. Stanton St., Rm. 215
El Paso, Texas 79901
544-3022

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge

CA 3-3733-C
3 Judge

EP-70-CA-7
3 Judge

(Title omitted in printing)

## STIPULATION OF FACTS

The following facts are hereby stipulated between the parties hereto:

Plaintiff intervenors CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES, and MANUEL SAPIEN, as alleged in their proposed complaint in the above cause, are;

1. qualified and registered Texas voters;

2. eligible to vote in the El Paso Democratic Primary to be held May 2, 1970;

3. Democrats;

4. desirous of the opportunity to vote for candidate WILLIAM PATE for Democratic nomination for the office of El Paso County Commissioner for Precinct Four;

5. unable to vote for said candidate WILLIAM PATE because Defendant has refused to place his name on the ballot owing to his non-payment of the assessed filing fee; and,

6. that the said Guzman, Lozano, Sifuentes, and Sa-

pien are too poor to pay the filing fee on behalf of candidate PATE.

DATED: 4/1/70

(Signature)
STUART R. ABELSON
Attorney for Intervenors

(Signature)
MARK F. HOWELL
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

## AFFIDAVIT

Before me, the undersigned authority on this day personally appeared LUZ A. LUZANO and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am forty-four (44) years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen, and am now and for over four years have been a resident of Canutillo, Texas. My address is P. O. Box 353, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat and am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commission, Precinct Four, and for other offices.

(4) I am separated, have six children living at home, and my income is approximately $201 per month,

received from State Welfare, through the AFDC program.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fee assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE but who cannot or will not, individually or collectively, pay the filing fees assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
LUZ A. LOZANO

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

## AFFIDAVIT

Before me, the undersigned authority on this day personally appeared CARLOS GUZMAN, and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am forty-four (44) years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen. My address is P. O. Box 113, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat and am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commissioner, Precinct Four, and for other offices.

(4) I am married with four children at home, and my income is approximately $650 per month take home

as an employee of Project BRAVO, am a past president and present advisor to U.N.I.O.N., Inc.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE, for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fees assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE, but who cannot or will not, individually or collectively, pay the filing fees assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
CARLOS GUZMAN

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

## AFFIDAVIT

Before me, the undersigned authority on this day personally appeared ANDREA L. SIFUENTES, and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am forty-eight (48) years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen, and am now and for over four years have been a resident of Canutillo, Texas. My address is General Delivery, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat, and am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commissioner, Precinct Four, and for other offices.

(4) I am a widow, have six children, and receive so-

cial security and state welfare through the AFDC program.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fees assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE, but who cannot or will not, individually or collectively, pay the filing fee assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
ANDREA L. SIFUENTES

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

**AFFIDAVIT**

Before me, the undersigned authority, on this day personally appeared MANUEL SAPIEN, and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am over twenty-one years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen. My address is General Delivery, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat, and I am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commissioner, Precinct Four, and for other offices.

(4) I am married, have nine children, earn approximately $100 per week as a plumber's helper. My wife does not work.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fees assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE, but who cannot or will not, individually or collectively, pay the filing fees assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
MANUEL SAPIEN

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge

VAN PHILLIP CARTER

vs.

MARTIN DIES, JR, and
DR. ELMER C. BAUM

CA 3-3733-C
3 Judge

THEODORE H. WISCHKAEMPER ON BEHALF
OF HIMSELF AND ALL OTHERS SIMILARLY
SITUATED

vs.

ROBERT L. WRIGHT, CHAIRMAN
OF THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.

REUBIN JENKINS, INTERVENOR

CA 3-3739
3 Judge

WILLIAM PATE
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED

vs.

GEORGE A. McALMAN, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS,
AND INDIVIDUALLY, AND THE COUNTY
DEMOCRATIC EXECUTIVE COMMITTEE OF
EL PASO COUNTY, TEXAS, AND THE
PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES and MANUEL SAPIEN, on behalf of themselves and all others similarly situated, and as members of U.N.I.O.N., Incorporated,
INTERVENORS

**ORDER**

On this the 3rd day of April, 1970, came on to be considered motions for preliminary injunction of plaintiffs in the above styled and numbered causes. The Court, having heard the arguments and read the briefs and pleadings, holds that relief should be granted to Theodore H. Wischkaemper and William Pate, individually and apart from any class they represent. It is to be understood that this order does not apply to any other parties in this suit or to any person who may file or who has filed application for candidacy but is not a party to this suit. Relief is denied as to Plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments.

Inasmuch as the constitutional question here presented is substantial, the Court finds that it is guided by the in chambers opinion of Mr. Justice Black in *Matthews v. Little,* 1970, — U.S. —, 90 S.Ct. 17, 24 L.Ed. 2d 45, in granting temporary relief as described above. Accordingly, it is ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiffs Pate and Wischkaemper are relieved from payment of the challenged filing fees until the Court has had an opportunity to pass on all the questions raised.

2. Should the Plaintiffs' claims be accepted by the Court, they would then never be required to pay the challenged fees.

3. Should the Plaintiffs' claims be rejected, they would then be required to pay the challenged fees.

4. This procedure permits the Democratic Parties in El Paso and Tarrant Counties to proceed with their primaries as scheduled.

(Signature)
HOMER THORNBERRY
United States Circuit Judge

(Signature)
SARAH T. HUGHES
United States District Judge

TAYLOR, District Judge (Dissenting)

Respectfully I dissent. I am fully mindful of the Order entered by Mr. Justice Black in the *Matthews v. Little* case referred to in the Order herein, but I am of the opinion that in that particular case Justice Black was concerned with a city election, expenses and costs of which were paid from public funds by the City of Atlanta. This case involves a party primary, the costs and expenses of which have been borne for years in Texas by the candidates and to now permit the Plaintiffs Wischkaemper and Pate to have their names placed on the ballot of that primary election without costs will create problems and difficulties from those who have paid their filing fees. Public funds have not been appropriated for the holding of the party primaries in Texas and, in my judgment, the Legislature of the State of Texas should have the opportunity and the time in which to review the contentions raised here and adopt appropriate legislation in the light of recent court decisions on matters of this kind. Plaintiffs Pate and Wischkaemper have the right under the Texas statutes to have their names put upon the ballot in the general election, but as succinctly pointed out by the

attorney for the Defendants, they do not want simply a place on the ballot but want the right to run on the ballot for the Democratic primary.

The questions involved here are important and far reaching and those who wish their names placed on the ballot of the party primaries can wait until this Court has had an opportunity, in due deliberation, to pass upon the constitutional questions involved.

(Signature)
W. H. TAYLOR, SR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
CA 3-3739
3 Judge

(Title omitted in printing)

## STIPULATION OF FACT

The Plaintiffs and Defendants in the above styled and numbered causes, do hereby stipulate as follows:

1. That Plaintiff William Pate is a qualified voter, taxpayer, resident citizen of El Paso County, Texas.

2. That Plaintiff William Pate is a resident of County Commissioner Precinct Four of El Paso County, Texas.

3. That Plaintiff William Pate meets all qualifications to be a candidate in Democratic Primary Elections for the office of County Commissioner of Precinct Four for El Paso County, Texas.

4. That Defendant George A. McAlmon, Jr., is a resident and citizen of El Paso County, Texas and is the duly elected chairman of the County Democratic Executive Committee of El Paso County, Texas.

5. That Defendant McAlmon as Chairman of the County Democratic Executive Committee is the Democratic Party Officer with whom applications for places on Democratic Primary ballots for Democratice Primary Elections shall be filed in the case of district officers included wholly or partially within El Paso

County, Texas, and county and precinct offices within El Paso County, Texas.

6. That in accordance with Article 13.08, Texas Election Code, the Defendant Democratic County Executive Committee apportions the cost (by assessment) of Democratic primary elections among the various candidates for nomination for district, county, and precinct offices, except candidates for the offices of Justice of the Court of Civil Appeals, office of State Board of Education, the office of State Senator, State Representative, and other State Officials (such as Governor) who pay fixed filing fees established by Article 13.15, Texas Election Code, to the Texas State Democratic Executive Committee.

7. That the defendant El Paso Democratic Executive Committee assessed candidates for the Democratic Primary of May 2, 1970 at seventeen (17) percent of assessed salary for the office for which they sought election, except where a fixed fee was set by state statute. A list of assessments made for each office nominated at the May 2, 1970 Democratic Party primary election in El Paso County, Texas is attached hereto as Exhibit "A."

8. That plaintiff William Pate was assessed $1,424.60 as a filing fee to be a candidate for the office of County Commissioner of Precinct Four in El Paso County, Texas by the El Paso County, Texas Democratic Executive Committee.

9. That Articles 13.07a, 13.08, 13.08a, 13.15, ad 13.16, Texas Election Code, imposes filing fees or assessments for candidates for public offices in the Democratic Party primary elections.

10. That the Chairman of the El Paso Democratic Executive Committee will not accept candidates' ap-

plications for a place on the ballot or file their names with the County Clerk of El Paso County, Texas in any future election unless a deposit of $50.00 is made, and the assessments made by the Democratic Executive Committee are timely paid, as required by the Texas Election Code.

11. That the Democratic County Chairman, as ex officio Chairman of the Democratic Primary Committee, and the Democratic Primary Committee, will not place any person's name on the official Democratic primary ballot in any future election who has not filed an application for a place on the ballot accompanied by the required deposit of $50.00 and who does not pay the required assessment as made by the El Paso County Texas Democratic Executive Committee as required by law.

12. That Plaintiff William Pate timely filed his application accompanied by the required $50.00 deposit with defendant McAlmon as the Chairman of the El Paso Democratic Executive Committee, for a place on the May 2, 1970 Democratic Party primary ballot as a candidate for County Commissioner Precinct Four of El Paso County, Texas.

13. That Plaintiff William Pate alleges that he was unable to and refused to pay the assessment of $1,424.60 imposed upon him as a condition precedent to having his name placed on the May 2, 1970 Democratic Party primary ballot as a candidate for the office of County Commissioner Precinct Four of El Paso County, Texas.

14. That the defendants McAlmon, as Chairman of the El Paso County Democratic Executive Committee, the El Paso County Democratic Executive Committee, and the El Paso Democratic Primary Committee re-

fused to place Plaintiff Pate's name on the ballot for the May 2, 1970 Democratic primary election unless he paid the $1,424.60 assessment timely as required by law, Plaintiff Pate contends that he was financially unable to pay this assessment.

15. That the cost of the Democratic Primary elections in all counties in Texas, including El Paso County, must be paid out of the assessments made against the candidates who seek nomination to precinct, county or district public office in said elections.

16. That state wide candidates such as governor pay a fixed fee to the Texas Democratic Executive Committee for the use of said committee as provided by law.

17. Plaintiff Pate was relieved from payment of the challenged filing fee by this Court and his name was placed on the ballot for County Commissioner Precinct Four, El Paso County, Texas, in the May 2, 1970 Democratic Primary election.

18. That William Pate was endorsed in said election by one of the two major newspapers in El Paso, Texas.

19. That William Pate lost the May 2, 1970 Democratic Primary election for the office he sought.

20. That William Pate received a total of 3,060 votes in said election out of a total of 10,685 votes cast; the incumbent received 6,013 and the third candidate received 1,612 votes.

21. That Plaintiff Pate would testify if called to testify, that he has announced that he will run for nomination for the office of County Commissioner for Precinct Four in El Paso County, Texas in the May, 1974 Democratic Primary election and in future elections thereafter, and that he will be a prospective Dem-

ocratic candidate in said elections, and will be unable to or will refuse to pay the filing fees and assessments imposed by Texas statutes and the assessments to be made by the El Paso Democratic Executive Committee.

22. Pursuant to the Texas Election Code, the Defendants, El Paso County Chairman of the County Democratic Executive Committee, the El Paso County Democratic Executive Committee and the El Paso Democratic Primary Committee, are not permitted by law to place the name of any person who may file or who has filed an application for candidacy for public office in future Democratic Primary elections in El Paso County, Texas upon the ballot for the public office they seek unless they timely pay the filing fees and assessments required by the Texas Statutes under attack in this cause, notwithstanding that said candidates are unable to pay or refuse to pay said filing fees and assessments and are otherwise qualified and have complied with all State Statutes unrelated to filing fees and assessments.

23. Plaintiff-Intervenor Van Phillip Carter, if called to testify, would testify:

(a) That he is a qualified voter, taxpayer, and resident citizen of Dallas County, Texas;

(b) That he now meets all the requirements under the Texas Election Statutes unrelated to filing for office and payment of filing fees and assessments to file as a candidate in Democratic Party primary elections for the state-wide office of Commissioner of the General Land Office and intends to be so qualified for future elections;

(c) That he intends to run and will run for said state-wide public office in future Democratic Party primary elections;

(d) That he is unable to pay and refuses to pay the filing fee of $1,000.00 required by Article 13.15, Texas Election Code for said public state-wide office, as a condition precedent to having his name put on the official Democratic Party primary ballot as an active candidate for said state-wide public office.

(e) That he is unable to comply with said Article 13.15, Texas Election Code, requirements that the said $1,000.00 filing fee must be paid to the Chairman of the State Democratic Executive Committee by the candidate at the time he files his application with same Chairman, or else the Chairman will not certify the candidates name to the Texas Secretary of State as a bona fide candidate to be transmitted by the Texas Secretary of State to the County Clerks of all Texas counties to be put on the official Democratic Party primary election ballots.

24. Plaintiff-Intervenors Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien, if called to testify, would testify that they are:

(a) Qualified and registered voters in El Paso County, Texas;

(b) Democrats;

(c) Eligible to vote in the May 2, 1970 Democratic Party primary election and in future Democratic Party primary elections to be held in El Paso County, Texas;

(d) Desirous of the opportunity to vote for candidate William Pate for Democratic nomination for the office of County Commissioner Precinct Four of El Paso County, Texas in future Democratic Party primary elections;

(e) Voters who cast their ballots for candidate William Pate in the May 2, 1970 Democratic Party primary election;

(f) Unable to vote for candidate William Pate in future Democratic Party primary elections because Defendants will refuse to place his name on the ballot owing to his non-payment of filing fees and assessments in future Democratic primary elections;

(g) Unable, due to their poverty, to pay the filing fees and assessments on behalf of candidate William Pate.

25. It is stipulated and agreed by all parties to this action through their attorneys of record that Van P. Carter, one of the Plaintiffs in the above cause, attempted to file for a place on the Democratic Primary ballot by sending a telegram to the Chairman of the State Democratic Executive Committee in Austin, Texas. This telegram was received by the State Democratic Executive Committee on February 2, 1970, having been sent from Dallas, Texas at 3:33 P.M., Central Standard Time. February 2 was the last day under the Texas Election Code for filing for office.

On the same day and at 5:08 P.M., Central Standard Time, the Chairman of the State Democratic Executive Committee replied to the telegram which he had received from Van P. Carter by telegram.

In further clarification, if such be required, there is filed in the records of this cause, an affidavit offered in evidence at the hearing on the preliminary relief request on Friday, April 3, 1970, which affidavit is incorporated by reference in this stipulation for all purposes and to which affidavit are attached copies of the above telegram.

It is further stipulated that Plaintiff Van P. Carter at no time submitted to the State Democratic Executife Committee a request in writing furnishing the information required by statute and executed under oath with the State Democratic Executive Committee nor was any filing fee actually tendered by cash or check or otherwise as required by statute.

26. It is stipulated and agreed by all parties to this action that the office of the Attorney General of Texas sent questionnaires to the various counties in the state, requesting information on assessment of candidates for the Democratic Primary of May 2, 1970. Answers from fifty-eight (58) counties are attached to this stipulation and made a part thereof, as "Exhibit B."

27. That this is an action for a declaratory judgment, as well as for preliminary, interlocutory and permanent injunctions.

28. That Theodore H. Wischkaemper is a resident citizen, taxpayer, and qualified voter of Fort Worth, Tarrant County, Texas, who meets all of the qualifications for County Judge set forth in the Constitution of the State of Texas, Art. 5, Sec. 15.

29. That Defendant, Dr. J. D. Tomme, Jr., is the duly elected Chairman of the Democratic Party of Tarrant County, Texas, and is the officer authorized by law to accept qualifying fees from candidates for local office in Tarrant County, Texas.

30. That intervenor, Reubin Jenkins, is a resident citizen, taxpayer, qualified voter, and duly elected Precinct Chairman of Election Precinct No. 93, of Fort Worth, Tarrant County, Texas.

31. That Plaintiff, Theodore H. Wischkaemper, if called to testify, would testify that he is financially

unable to pay the $6,300.00 fee assessed for the office of County Judge of Tarrant County, Texas, for the 1970 Democratic Primaries;

32. That Plaintiff, Theodore H. Wischkaemper, was a bona fide candidate for the office of County Judge in Tarrant County, Texas, in the 1970 Democratic Primary Election, and had his name printed on the official ballot without the payment of any qualifying fee by order of the 3-judge Federal District Court.

33. That Plaintiff, Theodore H. Wischkaemper, if called to testify, would testify that he will run for the office of County Judge of Tarrant County, Texas, in future elections, and will be a voter in such elections.

34. The Defendant, Dr. J. D. Tomme, Jr., Chairman of the Democratic Party of Tarrant County, Texas, will not accept candidates' applications for a place on the primary ballot or file their names with the County Clerk, or other appropriate official, unless a statutory deposit of $50.00 is paid and the assessment made by the Tarrant County Democratic Executive Committee is timely paid, or the fixed filing fee is timely paid.

35. The ex-officio chairman of the Democratic Party of Tarrant County, Texas, and the Democratic Party Committee will not place any person's name on the official democratic ballot who has not paid the statutory $50.00 deposit at the time of filing his application for a place on the ballot and who has not timely paid his fixed fee set by statute, or his assessed fee determined by the local Democratic Executive Committee.

36. The Plaintiff, Theodore H. Wischkaemper, if called to testify, would testify that he is not only financially unable to pay the filing fees and assessments imposed by the Texas statutes under attack and the assessments made by the Democratic Executive Com-

mittee and the State of Texas under the Texas Election Code, but refuses to pay the same, not only for the 1970 elections, but for future elections as well.

37. That the Tarrant County Democratic Executive Committee have enacted a resolution which imposes various qualifying fees, ranging from $50.00 up to and including $8,900.00 for the 1970 Democratic Primary Elections; that the Schedule of Fees attached hereto and marked "Exhibit C" is a correct copy of said qualifying fees; and that said figures have been assessed mainly on the basis of 8% of the salary for the full term of office, which would amount to 16% of one year's salary for 2-year offices and 32% of one year's salary for 4-year offices.

38. That "Exhibit D," which accompanies this instrument, is an accurate reproduction of parts of the statutory audits of the Tarrant County Democratic Party financial records for the Democratic Primary Elections held for the following years. 1970, 1968, 1966, 1964, 1962, 1960, 1958, 1954, 1952 and 1948, as the same appear on file in the County Clerk's Office of Tarrant County, Texas. That the years 1950 and 1956 are not on file in the County Clerk's Office of Tarrant County, Texas. These records reflect the filing fees and assessments in the Primary Elections for the year of audit. The parties hereby stipulate to the accuracy and admissibility of such statutory audits.

39. That "Exhibit E," which accompanies this instrument, is an accurate reproduction of parts of the statutory audits of the El Paso County Democratic Party financial records for the Democratic Primary Elections held for the following years: 1968, 1966, 1964, 1960 and 1958, as the same appear on file in the County Clerk's Office of El Paso County, Texas. These records

reflect the filing fees and assessments in the Primary Elections for the year of the audit. The parties hereby stipulate to the accuracy and admissibility of such statutory audits.

40. Plaintiff-Intervenor, Reubin Jenkins, if called to testify, would testify that he:

(a) Is desirous of the opportunity to vote for candidate Theodore H. Wischkaemper for Democratic nomination for the office of County Judge of Tarrant County, Texas in future Democratic Party primary elections;

(b) Did cast his ballot for candidate Theodore H. Wischkaemper in the May 2, 1970 Democratic Primary election;

(c) Is unable to vote for candidate Theodore H. Wischkaemper in future Democratic Party primary elections because Defendants will refuse to place his name on the ballot owing to his non-payment of filing fees and assessments in future Democratic primary elections;

(d) Is unable, due to his poverty, to pay the filing fees and assessments on behalf of candidate Theodore H. Wischkaemper.

41. There is hereby incorporated by reference as a part of this stipulation, the testimony upon direct and cross-examination, as well as questions by the Court presented at the hearing held before the Court, April 3, 1970, at Dallas, Texas.

Signed this 21st day of August, 1970.

WILLIAM J. CRAIG
Capitol Station
Austin, Texas 78711

CHARLES F. HERRING
900 Perry-Brooks Bldg.
Austin, Texas 78701
ESTIL VANCE, JR.
1800 First National Bank Bldg.
Fort Worth, Texas 76102
MARK F. HOWELL
508 Southwest National Bank Bldg.
El Paso, Texas 79901
*Attorneys for All Defendants*

(Signature)
MARK F. HOWELL
JOHN FASHING
608 Southwest National Bank Bldg.
El Paso, Texas 79901
A. L. CROUCH
109 N. Taylor Street
Fort Worth, Texas
H. AVERIL SWEITZER
5th Floor, Manor House
Dallas, Texas
*Attorneys for All Plaintiffs*
(Signature)
JOHN FASHING

EXHIBIT "A"

ASSESSMENTS OF CANDIDATES FOR DEMOCRATIC PRIMARY
EL PASO COUNTY
MAY 2, 1970

1. All indicated salaries are those which will be paid in 1970, assuming the present pay scale is maintained, except that the indicated salaries of Justices of the Peace are those paid to each by the County of El Paso during 1969.

2. Except for representatives to the legislature whose filing fees of $150.00 are fixed by the Election Code, the assessment for each office is 17% of the assessed salary.

| Office | Salary | Assessed Salary | Assessment |
|---|---|---|---|
| County Clerk | $14,400.00 | $14,400.00 | $2,448.00 |
| County Treasurer | 9,600.00 | 9,600.00 | 1,632.00 |
| County Surveyor | None | None | None |
| County Courts at Law | 14,400.00 | 14,400.00 | 2,448.00 |
| County Judge | 14,400.00 | 14,400.00 | 2,448.00 |
| County Commissioner | 8,380.00 | 8,380.00 | 1,424.60 |
| 34th District Court | 23,900.00 | 3,984.00 | 677.28 |
| District Attorney | 17,500.00 | 2,917.00 | 495.89 |
| Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2. | | | |
| 120th District Court | 23,900.00 | 23,900.00 | 4,063.00 |
| 171st District Court | 23,900.00 | 23,900.00 | 4,063.00 |
| 168th District Court | 23,900.00 | 23,900.00 | 4,063.00 |
| Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2. | | | |
| District Clerk | 14,400.00 | 14,400.00 | 2,448.00 |
| **Justices of the Peace:** | | | |
| Precinct 1, Place 2 | 9,600.00 | 9,600.00 | 1,632.00 |
| Precinct 2 | 8,622.00 | 8,622.00 | 1,465.74 |
| Precinct 3 | 7,991.00 | 7,991.00 | 1,358.47 |
| Precinct 4 | 4,067.00 | 4,067.00 | 691.39 |
| Precinct 5 | 6,792.00 | 6,792.00 | 1,154.64 |
| Precinct 6 | 5,801.00 | 5,801.00 | 986.17 |
| Precinct 7 | 22,720.00 | 22,720.00 | 3,862.40 |
| Precinct 8 | 10,926.00 | 10,926.00 | 1,857.42 |
| U. S. Representative 16th Congressional District | 42,500.00 | 3,864.00 | 656.88 |
| Note: This office covers 11 Counties. For assessment the salary is divided by 11. | | | |

EXHIBIT "B"

EL PASO COUNTY
DEMOCRATIC PARTY
508 Southwest Bank Building
EL PASO, TEXAS 79901
Telephone 533-6622

February 10, 1970

Mr. William (Bill) Pate
8705 Marble Drive
El Paso, Texas

Dear Mr. Pate:

You are advised that the County Democratic Executive Committee has established a filing fee for the office of County Commissioner, Pct. 4 in the amount of $1,424.60.

In order to insure your position on the ballot, it will be necessary to pay your assessment on or before February 23, 1970, at this office.

Since your original deposit was $50.00, the amount that must be paid is $1,374,60.

Sincerely,
DEMOCRATIC HEADQUARTERS
George A. McAlmon
County Chairman

Note: Please use cash, certified check or money order.

## PROOF ON ASSESSMENT
2/10/70

February 6, 1970

TO: TRAVIS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE
FROM: Robert Sneed

The following is the report of the Subcommittee on Assessments in accordance with the Election Code. Please remember the meeting of the Executive Committee at 5:30 P.M., Monday, February 9, 1970.

### 1970 ESTIMATED ELECTION BUDGET

| | | | |
|---|---|---|---|
| 1. Cost of 1968 Election | | | |
| a. Labor | $22,858.59 | | |
| b. Other costs | 9,689.74 | | |
| | | $32,548.33 | |
| 2. Plus 12% increase of other costs | | 1,162.77 | |
| 3. Plus increase by reason of additional precincts | | 2,080.95 | |
| 4. Increase caused by raising payment for labor from $1.25 to $1.50 per hour | | 4,771.71 | |
| 5. Allowance for overage and failure to pay assessment | | 13,704.97 | |
| | | | $54,268.73 |
| Income: | | | |
| Total salaries per candidate for offices sought within filing deadline—$1,204,927.33 | | | |
| Recommended assessment @ 4½% | $54,221.73 | | |
| Less: Collected | 1,543.70 | | |
| | | $52,678.03 | |
| Plus: Other funds collected | | 1,590.70 | |
| | | | $54,268.73 |

| Position-Name | Salary | Assessment | Paid | Balance |
|---|---|---|---|---|
| District Clerk—(14,000) | | | | |
| O. T. Martin, Jr. | 56,000.00 | 2,520.00 | 50.00 | 2,470.00 |
| County Clerk—(14,000) | | | | |
| Doris Shorpshire | 56,000.00 | 2,520.00 | 50.00 | 2,470.00 |
| Marguerite Langston | 56,000.00 | 2,520.00 | 50.00 | 2,470.00 |
| Rubert Ceder | 56,000.00 | 2,520.00 | 50.00 | 2,470.00 |
| Gene Burchard | 56,000.00 | 2,520.00 | 50.00 | 2,470.00 |
| County Judge—(13,480) | | | | |
| J. H. Watson | 71,200.00 | 3,204.00 | 50.00 | 3,154.00 |
| Bob Kuhn | 71,200.00 | 3,204.00 | 50.00 | 3,154.00 |
| Judge, Co. Ct. at Law #1—(16,500) | | | | |
| Jerry Dellana | 66,000.00 | 2,970.00 | 50.00 | 2,920.00 |
| Judge, Co. Ct. at Law #2—(16,500) | | | | |
| David S. McAngus | 66,000.00 | 2,970.00 | 50.00 | 2,920.00 |
| County Treasurer—(12,350) | | | | |
| Johnny Crow | 49,400.00 | 2,223.00 | 50.00 | 2,173.00 |

| | | | | |
|---|---|---|---|---|
| County School Supt.—(14,000) | | | | |
| F. W. "Joe" Horton | 56,000.00 | 2,520.00 | .50.00 | 2,470.00 |
| County Surveyor—(—0—) | | | | |
| Marlton O. Metcalfe, Sr. | —0— | —0— | —0— | —0— |
| Co. Com., Prec. 2—(12,500) | | | | |
| N. L. Gault | 50,000.00 | 2,250.00 | 50.00 | 2,200.00 |
| Co. Com., Prec. 4—(12,500) | | | | |
| Richard Moya | 50,000.00 | 2,250.00 | 50.00 | 2,200.00 |
| Lawson Boothe | 50,000.00 | 2,250.00 | 50.00 | 2,200.00 |
| Paul Tovar | 50,000.00 | 2,250.00 | 50.00 | 2,200.00 |
| JP, Prec. 1—(840) | | | | |
| S. F. Glass | 3,360.00 | 151.20 | 50.00 | 101.20 |
| Howard Davis | 3,360.00 | 151.20 | 50.00 | 101.20 |
| JP, Prec. 2—(1,800) | | | | |
| Bill Sandifer | 1,800.00 | 81.00 | 50.00 | 31.00 |
| JP, Prec. 3, Pl. 2—(10,500) | | | | |
| Don Cantrell | 42,000.00 | 1,890.00 | 50.00 | 1,840.00 |
| Mrs. Mary O'Connor Wilkov | 42,000.00 | 1,890.00 | 50.00 | 1,840.00 |
| JP, Prec. 4—(1,800) | | | | |
| Vernon Pfluger | 7,200.00 | 324.00 | 50.00 | 274.00 |
| O. C. Garner | 7,200.00 | 324.00 | 50.00 | 274.00 |
| JP, Prec. 5—(10,500) | | | | |
| Frank McBee | 42,000.00 | 1,890.00 | 50.00 | 1,840.00 |
| Mrs. Edith Roberts | 42,000.00 | 1,890.00 | 50.00 | 1,840.00 |
| JP, Prec. 6—(5,400) | | | | |
| John K. Ross, Jr. | 21,600.00 | 972.00 | 50.00 | 922.00 |
| District Judge, 147th—(27,000) | | | | |
| Mace B. Turman, Jr. | 108,000.00 | 4,860.00 | 143.70 | 4,716.30 |
| State Rep., Pl. 1— | | | | |
| Harold Davis | | —0— | 143.70 | —0— |
| James "Ted" Nuse | | —0— | 143.70 | —0— |
| David Marks | | —0— | 143.70 | —0— |
| State Rep., Pl. 2— | | | | |
| Durward Curlee | | —0— | 143.70 | —0— |
| State Rep., Pl. 3— | | | | |
| Don Cavness | | —0— | 143.70 | —0— |
| State Rep., Pl. 4— | | | | |
| Wilson Foreman | | —0— | 143.70 | —0— |
| Dean R. Rindy | | —0— | 143.70 | —0— |
| Bill English | | —0— | 143.70 | —0— |
| George B. Shepherd, Jr. | | —0— | 143.70 | —0— |
| Gayle Essary | | —0— | 143.70 | —0— |
| Robert Everett L. Looney | | —0— | 143.70 | —0— |
| U. S. Congressman—(42,500) | | | | |
| J. J. "Jake" Pickle (divided by 12) | 7,083.33 | 318.75 | 50.00 | 268.75 |
| State Bd. of Ed.— | | | | |
| Walter R. Koch | —0— | —0— | 5.00 | —0— |
| Mrs. J. Sam Winters | —0— | —0— | 5.00 | —0— |
| Co. Chmn.— | | | | |
| Robert C. Sneed | —0— | —0— | —0— | —0— |
| Co. Com., Prec. 1— | | | | |
| Otto Mittag | 26,042.00 | 1,171.89 | 50.00 | 1,121.89 |
| W. D. Dittlinger | 26,042.00 | 1,171.89 | 50.00 | 1,121.89 |
| | $1,204,927.33 | $54,221.73 | $ 3,134.40 | $52,678.03 |

I.

INCOME

| Name | Total Paid | Refund 43.7464% |
|---|---|---|
| Harold Davis | 143.70 | 62.88 |
| James "Ted" Nuse | 143.70 | 62.88 |
| David Marks | 143.70 | 62.88 |
| Durward Curlee | 143.70 | 62.88 |
| Don Cayness | 143.70 | 62.88 |
| Robert Everett L. (Bob) Looney | 143.70 | 62.88 |
| Dean R. Rindy | 143.70 | 62.88 |
| Bill English | 143.70 | 62.88 |
| Gayle Essary | 143.70 | 62.88 |
| Wilson Foreman | 143.70 | 62.88 |
| George B. Shepherd, Jr. | 143.70 | 62.88 |
| Walter R. Koch | 5.00 | 2.19 |
| Mrs. Sam Winters | 5.00 | 2.19 |
| Mace B. Thurman, Jr. | 4,860.00 | 2,126.08 |
| Bob Kuhn | 3,204.00 | 1,401.64 |
| J. H. Watson | 3,204.00 | 1,401.64 |
| Jerry Dellana | 2,970.00 | 1,299.27 |
| David S. McAngus | 2,970.00 | 1,229.27 |
| O. T. Martin, Jr. | 2,520.00 | 1,102.41 |
| Doris Shropshire | 2,520.00 | 1,102.41 |
| Rubert Ceder | 2,520.00 | 1,102.41 |
| Emilie Limberg | 50.00 | 21.87 |
| Gene Burchard | 50.00 | 21.87 |
| Marguerite Langston (by Brown) | 50.00 | 21.87 |
| Johnny Crow | 2,223.00 | 972.48 |
| F. W. Joe Horton | 2,520.00 | 1,102.41 |
| Otto Mittag | 50.00 | 21.87 |
| David W. Samuelson | 1,171.89 | 512.66 |
| T. L. (Tommie) Wyatt | 1,171.89 | 512.66 |
| Dan Killen | 1,171.89 | 512.66 |
| W. D. Dittlinger | 1,171.89 | 512.66 |
| N. L. Gault | 2,250.00 | 984.30 |
| Richard Moya | 2,250.00 | 984.30 |
| Paul Tovar | 2,250.00 | 984.30 |
| Lawson Boothe | 2,250.00 | 984.30 |
| Don Cantrell | 1,890.00 | 826.80 |
| Mrs. Mary O'Connor Wilkov | 1,890.00 | 826.80 |
| Frank W. McBee | 1,890.00 | 826.80 |
| Edith Roberts | 1,890.00 | 826.80 |
| John K. Ross, Jr. | 972.00 | 425.22 |
| Bill Sandifer | 81.00 | 35.44 |
| Howard Davis | 151.20 | 66.15 |
| S. F. Glass | 151.20 | 66.15 |
| Oscar Garner | 324.00 | 141.74 |
| Vernon M. Pfluger | 324.00 | 141.74 |
| J. J. "Jake" Pickle | 318.75 | 139.44 |
| | $54,871.41 | |
| Bob Kuhn (Recount) Income | 900.00 | |
| | $55,771.41 | |
| Less: Recount expenses & Refund | 900.00 | |
| | $54,871.41 | |
| Less: Costs of election | 30,866.93 | |
| | $24,004.48 | $24,004.48 |

## TOTAL EXPENSES

| | |
|---|---|
| General expense | $ 8,868.31 |
| Labor 1st Primary | 17,404.77 |
| Labor 2nd Primary | 4,181.25 |
| Rent 1st Primary | 293.10 |
| Rent 2nd Primary | 119.50 |
| | $30,866.93 |

## SUMMARY

| | |
|---|---|
| Income | $54,871.41 |
| Plus: Recount income | 900.00 |
| | $55,771.41 |
| Less: Recount expense and refund | 900.00 |
| | $54,871.41 |
| Less: Election expenses | 30,866.93 |
| Balance for refund | $24,004.48 |
| % of refund | 43.7464% |

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN McLENNAN COUNTY

| | Annual Sarlary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $13,764.00 | $ 2,064.60 | $ 1,259.41 |
| County Treasurer | 8,202.00 | 1,230.30 | 750.48 |
| County Courts at Law | 13,764.00 | 2,064.60 | 1,259.41 |
| County Judge | 14,400.00 | 2,160.00 | 1,317.60 |
| County Commissioner, No. 4 | 13,428.00 | 1,789.20 | 1,091.41 |
| 54th District Court | 22,700.00 | 3,405.00 | 2,077.05 |
| 170th District Court | 22,700.00 | 3,405.00 | 2,077.05 |
| County Commissioner, No. 2 | 13,428.00 | 1,550.64 | 945.89 |
| District Attorney | 14,400.00 | 1,872.00 | 1,141.92 |
| District Clerk | 13,764.00 | 2,064.60 | 1,259.41 |
| Justice of Peace | | | |
| Precinct No. 1 | 8,000.00 | 1,200.00 | 732.00 |
| Precinct No. 2 | 2,094.00 | 272.22 | 166.05 |
| Precinct No. 3 | 2,904.00 | 435.60 | 265.72 |
| Precinct No. 4 | 774.00 | 116.10 | None filed |
| Precinct No. 5 | 2,904.00 | 435.60 | 265.72 |
| Precinct No. 6 | 1,284.00 | 192.60 | 117.49 |
| Precinct No. 7 | 888.00 | 133.00 | 81.25 |
| County School Superintendent | 17,580.00 | 2,637.00 | 1,608.57 |

Used Paper Ballots

WALTER J. WILLIAMS
Chairman of Democratic Executive Committee of McLennan County, Texas

## EXPENSE REPORT

### Democratic Primaries 1970

**Received from Candidates**

| Name | Paid | Refund |
|---|---|---|
| B. J. Allen | $ 435.60 | $ 265.72 |
| George Allen | 2,064.60 | 1,259.41 |
| Carl Anderson | 3,405.00 | 2,077.05 |
| Jim Bock | 1,872.00 | 1,141.92 |
| Frank Denny | 2,064.60 | 1,259.41 |
| Lane Denton | 150.00 | 30.00 |
| Merle H. Dooley | 1,872.00 | 1,141.92 |
| Martin Eichelberger | 1,872.00 | 1,141.92 |
| L. B. Fulp | 133.20 | 81.25 |
| Ed H. Grimm | 435.60 | 265.72 |
| Howard E. Grubb | 1,550.64 | 945.89 |
| Joe R. Hatcher | 2,637.00 | 1,608.57 |
| Mickey Holmes | 150.00 | 30.00 |
| Johnnie Hunt | 1,230.30 | 750.48 |
| Joe N. Johnson | 1,200.00 | 732.00 |
| B. W. Kittrell | 50.00 | 30.50 |
| Neil Koos | 50.00 | 30.50 |
| Joe Lechler | 1,789.20 | 1,091.41 |
| C. L. (Pete) Middlebrook | 2,064.60 | 1,259.41 |
| Raymond R. Mormino | 3,405.00 | 2,077.05 |
| Tom Moore Jr. | 150.00 | 30.00 |
| Roy E. Nail | 1,550.64 | 945.89 |
| W. R. Poage | 386.36 | 235.68 |
| Bob Salter | 87.90 | 17.58 |
| John Shannon | 272.22 | 166.05 |
| Milton Stabeno | 50.00 | 30.50 |
| Dick Tandy | 150.00 | 30.00 |
| Bob L. Thomas | 2,160.00 | 1,317.60 |
| J. B. Vandiver | 192.60 | 117.49 |
| Wiley W. Warren | 272.22 | 166.05 |
| Murray Watson Jr. | 75.00 | 15.00 |
| | $33,777.28 | $20,291.97 |

**Receipts**

| | |
|---|---|
| From Candidates | $33,777.28 |
| From Gen. Tire & Rubber* | 62.00 |
| On hand 7-1-69 | 180.55 |
| Total receipts | $34,020.83 |

**Disbursements**

| | |
|---|---|
| Meals | $ 74.88 |
| Ballots, 1st Primary | 813.07 |
| Overprinting etc. | 689.30 |
| Daters, rubber stamps | 38.95 |
| Envelopes | 10.90 |
| Voter Registration Pads | 35.95 |
| Party Signs etc. | 35.85 |
| Postage | 35.22 |
| Judges, 1st Primary | 11,015.25 |
| Chairs, Waco Rental | 5.21 |
| Waco School Janitors | 201.22 |
| Incidentals—Xerox etc. | 18.46 |
| Secretarial help | 100.00 |
| Walter J. Williams | 200.00 |
| Car expense, telephone | 300.00 |
| Total expenses | $13,574.26 |
| Refunds to Candidates | 20,291.97 |
| | $33,866.23 |
| Bank Balance 7-7-70 | $ 154.60 |

*The Good Citizenship Campaign at General Tire and Rubber Co. gave the committee $62.00.

I, Walter J. Williams, Chairman of the McLennan County Democratic Executive Committee, do hereby certify that the above is a true and correct account of all monies received and disbursed by the County Executive Committee from September 1, 1968 through August 1, 1970, including all expenses for the 1970 Democratic Primaries.

WALTER J. WILLIAMS
County Chairman

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN WICHITA COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $13,200.00 | $ 1,584.00—12% | 55%, all of them |
| County Treasurer | 10,560.00 | 1,267.20—12% | |
| County Courts at Law | 17,620.00 | 2,114.40—12% | |
| County Commissioner | 13,200.00 | 1,320.00—10% | if he has one opponent |
| District Court | 24,620.00 | 2,954.40—12% | |
| District Clerk | 13,200.00 | 1,584.00—12% | |
| Justice of Peace Precinct No. 1 | 7,200.00 | 720.00—10% | (has one opponent) |

| | | | |
|---|---|---|---|
| Precinct No. 2 | 3,300.00 | 264.00— 8% | (has over one opponent) |
| Precinct No. 3 | 3,600.00 | 288.00— 8% | (has over one opponent) |
| Precinct No. 4 | 3,600.00 | 288.00— 8% | (has over one opponent) |

Used Paper Ballots

A. F. EDWARDS
Chairman of Democratic Executive
Committee of Wichita
County, Texas

Held no second primary except in three small boxes for justice of the peace. I will send you a copy of my report to county clerk soon as I can.

A. F. EDWARDS

DEMOCRATIC HEADQUARTERS
Wichita County and 13th Congressional District
2160 Avenue H, Wichita Falls, Texas 76309

Mr. William J. Craig
Assistant Attorney General
Austin, Texas
Dear Sir,

I am enclosing a copy of the financial report of the Democratic Executive Committee on the primary fund for this year, which may be of some help to you in studying our problem.

For a long time I have thought the assessments for the primary elections are unduly heavy, and tend to discourage those who can't afford it from running for office.

We have usually assessed them just what it takes to do the job, as estimated from the number of candidates, and past experience. It has run all the way from 5½% to 13½% of the annual salary, with refunds from 25%, to 55% this year with a limited run-off.

This year we assessed 12% if no opponent, 10% if one opponent, and 8% if more than that. It so happened that no county wide office was contested this year, and only one candidate for district judge, where the big money is.

I taught government for 30 years in Midwestern University, and have been on the Democratic Executive Committee now for 40 years, chairman for six years. I have thought for a long time that the primaries should be paid for as are the general elections, same election officials, for both primaries, giving the voter whichever ballot he wants, or is entitled to, if registered at the courthouse with party affiliation, as he should be. I hope the legislature passes such a law.

Sincerely,
A. F. EDWARDS

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970
FOR COUNTY OFFICES IN SMITH COUNTY

| | Annual Sarlary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $13,000.00 | $ 1,560.00 | $ 388.09 |
| County Treasurer | 7,590.00 | 910.80 | 226.83 |
| County Courts at Law | 15,000.00 | 1,750.00 | 447.83 |
| County Judge | 20,700.00 | 2,484.00 | 618.06 |
| County Commissioner | 13,000.00 | 1,560.00 | 388.09 |
| 2 Counties—Unexpired Term | | | |
| 114th District Court | 26,000.00 | 390.00 | 97.02 |
| District Attorney | 15,000.00 | 1,800.00 | 448.25 |
| District Clerk | 13,000.00 | 1,560.00 | 388.09 |
| Justice of Peace | | | |
| Precinct No. 2 | 1,800.00 | 216.00 | 53.90 |
| Precinct No. 3 | 2,400.00 | 288.00 | 71.87 |
| Precinct No. 4 | 3,600.00 | 432.00 | 107.81 |

| | | | |
|---|---|---|---|
| Precinct No. 5 | 2,400.00 | 288.00 | 59.29 |
| Judge Dom. Rel Court | 20,000.00 | 2,400.00 | 597.40 |
| Both paper ballots and voting machine | | | |

DORIS G. STANLEY
Secretary of Democratic Executive Committee of Smith County, Texas

THE STATE OF TEXAS
COUNTY OF SMITH

TO THE HONORABLE ERNEST CHRISTIAN, County Clerk of Smith County, Texas:

Comes now J. BURNS BROWN, Chairman of the Democratic Executive Committee of said County, pursuant to the provisions of Article 13.18 of the Texas Election Code, and files this financial report of all monies received and expended by said Committee in connection with the holding of the first and second Democratic Primary Election, 1970, and of all money on hand, such report being as follows:

| | |
|---|---|
| Balance carried over from 1968 | $ 55.16 |
| Proceeds from sale of unused supplies | 42.00 |
| Filing fees collected from candidates | 18,745.44 |
| PRIMARY FUND | $18,842.60 |
| LESS total expenditures in holding Primaries (Exhibit "A" attached hereto for details) | 13,598.03 |
| BALANCE | $ 5,244.57 |
| LESS allowance for County Chairman (Article 13.18, Texas Election Code—5% of net election costs as shown by Exhibit "A" attached) | 677.80 |
| NET BALANCE IN PRIMARY FUND | $ 5,566.77 |
| LESS refund to candidates (Exhibit "B" attached) | 4,401.77 |
| BALANCE ON HAND | $ 75.00 |

J. BURNS BROWN, Chairman,
Democratic Executive Committee
of Smith County, Texas.

THE STATE OF TEXAS
COUNTY OF SMITH

BEFORE ME, the undersigned authority, on this day personally appeared the said J. BURNS BROWN, who being by me duly sworn, stated that the above financial report, including the attached Exhibits, is true and correct, to certify which witness my hand and seal of office this the 21st day of July, A.D. 1970.

DORIS G. STANLEY
Notary Public in and for
Smith County, Texas.

DISBURSEMENTS

| | | |
|---|---|---|
| 1. Stamps, checkbooks, envelopes, postage | $ | 94.92 |
| 2. Rent, custodial service, utilities | | 1,432.35 |
| 3. Election supplies and materials | | 1,796.68 |
| 4. Transporting voting machines | | 484.00 |
| 5. Notary expense | | 16.18 |
| 6. Pay for Election Judges and clerks at $1.40 per hour plus $5.00 extra to Judges for delivering election returns | | 9,773.90 |
| TOTAL | | $18,598.03 |

NOTE: At this time several checks are still outstanding; however, these are taken into account in this report.

EXHIBIT "A"

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN GRAYSON COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $ 9,880.76 | $ 1,673.70 | $ 1,171.59 |
| County Treasurer | 5,960.40 | 1,014.77 | 710.33 |
| County Courts at Law | 12,000.00 | 2,043.02 | 1,430.11 |
| County Judge | 12,230.76 | 2,082.32 | 1,457.62 |
| County Commissioner | 9,432.00 | 1,605.81 | 1,124.06 |
| District Clerk | 9,880.76 | 1,673.70 | 1,171.59 |
| Justice of Peace | | | |
| Precinct No. 2 | | 500.00 | 350.00 |
| Precinct No. 7 | | 50.00 | 35.00 |
| Precinct No. 8 | | 100.00 | 70.00 |
| Used Paper Ballots | | | |

CHARLES E. HUGHES
Chairman of Democratic Executive Committee of Grayson County, Texas

## RECEIPTS AND DISBURSEMENT STATEMENT, 1970

| | | |
|---|---|---|
| RECEIPTS: | | |
| Filing fees collected | | $ 4,210.00 |
| DISBURSEMENTS: | | |
| Ballots and supplies | $ 406.00 | |
| Judges & clerical salaries | 2,646.00 | |
| Misc'l exp. | 362.00 | |
| Refunds | 795.00 | $ 4,210.00 |

H. L. WOOLDRIDGE
County Chairman

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN DENTON COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $12,000.00 | $ 777.00 | $ 116.55 |
| County Treasurer | 7,800.00 | 546.00 | 81.90 |
| County Courts at Law | 12,000.00 | 777.00 | 116.55 |
| County Judge | 12,000.00 | 777.00 | 116.55 |
| County Commissioner | 12,000.00 | 777.00 | 116.55 |
| 158th District Court | 20,000.00 | 1,400.00 | 210.00 |
| District Clerk | 12,000.00 | 777.00 | 116.55 |
| Justice of Peace | | | |
| Precinct No. 1 | 7,000.00 | 490.00 | 73.50 |
| Precinct No. 3 | 5,812.00 | 350.00 | 52.50 |
| Precinct No. 4 | 2,194.00 | 154.00 | 23.10 |
| Precinct No. 5 | 1,186.00 | 84.00 | 12.60 |
| County School Superintendent | | 840.00 | 125.00 |
| Used Paper Ballots | | | |

MRS. LONNIE J. YARBROUGH
Chairman of Democratic Executive Committee of Denton County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN CHAMBERS COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| District and County Clerk | $ 9,734.75 | $ 973.47 | $ 535.40 |
| County Treasurer | 8,481.60 | 848.16 | 466.48 |
| County Judge | 9,734.75 | 973.47 | 535.40 |
| County Commissioner | 6,758.64 | 675.86 | 371.72 |
| District Judge | 21,000.00 | 1,050.00* | 577.50 |
| Justice of Peace | | | |
| Precinct No. 1 | 6,000.00 | 600.00 | 330.00 |
| Precinct No. 2 | 5,961.60 | 596.16 | 327.88 |
| Precinct No. 3 | 1,440.00 | 144.00 | 79.20 |
| Precinct No. 4 | 4,800.00 | 480.00 | 264.00 |
| Precinct No. 5 | 6,000.00 | 600.00 | 330.00 |
| Used Paper Ballots | | | |

D. W. McLEOD
Chairman of Democratic Executive Committee of Chambers County, Texas

*District Judges assessment based upon 2 county Judicial District, according to Texas Election Code.

The refunds shown here are the preliminary refunds. The final costs of the Primary have not been completely figured. There is a possibility for a very small additional refund.

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN MOTLEY COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| District and County Clerk | $ 5,400.00 | $ 100.00 | $ 20.00 |
| County Treasurer | 2,400.00 | 50.00 | 10.00 |
| County Judge | 6,146.00 | 100.00 | 20.00 |
| County Commissioner | 1,800.00 | 50.00 | 10.00 |
| District Attorney | | 50.00 | 10.00 |
| Justice of Peace | | | |
| Precinct No. 1 | 1,800.00 | 50.00 | 10.00 |
| District Judge | | 50.00 | 10.00 |
| Used Paper Ballots | | | |

FURMAN VINSON
Chairman of Democratic Executive Committee of Motley County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN SOMERVELL COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County and District Clerk | $ 1,400.00 | $ 175.00 | $ 83.50 |
| County Treasurer | 3,000.00 | 165.00 | 78.50 |
| County Judge | 3,820.00 | 200.00 | 95.00 |
| County Commissioner | 1,500.00 | 100.00 | 47.50 |
| Justice of Peace | 1,500.00 | 75.00 | 35.00 |
| Used Paper Ballots | | | |

WALTER C. ERNST
Chairman of Democratic Executive Committee of Somervell County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN CARSON COUNTY

All were charged 6% of Annual Salary and then a 42% refund was made

| (One office—combined) | | Annual Salary | Assessment | Refund |
|---|---|---|---|---|
| County and District Clerk | (6%) | $ 7,944.00 | $ 476.64 | $ 200.00 |
| County Treasurer | | 7,944.00 | 476.64 | 200.00 |
| County Judge | | 7,944.00 | 476.64 | 200.00 |
| County Commissioner | | 7,062.00 | 423.72 | 178.00 |
| Justice of Peace | | | | |
| Precinct No. 1 | | 5,649.00 | 338.94 | 142.00 |
| Precinct No. 5 | | 3,177.00 | 190.62 | 80.00 |
| Precinct No. 6 | | 3,177.00 | 190.62 | 80.00 |
| Used Paper Ballots | | | | |

We refund all the left over monies after paying all expenses of supplies and Judges and Clerks.

A. J. WIESER
Chairman of Democratic Executive Committee of Carson County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN WARD COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $ 8,160.00 | $ 6,250.00 | $ 309.51 |
| County Treasurer | 8,160.00 | 6,250.00 | 309.51 |
| County Judge | 8,160.00 | 6,250.00 | 309.51 |
| County Commissioner | 6,270.00 | 6,250.00 | 309.51 |
| District Clerk | 8,160.00 | 6,250.00 | 309.51 |
| Justice of Peace | | | |
| Precinct No. 1 | 1,800.00 | 225.00 | 122.00 |
| Precinct No. 2 | 1,800.00 | 225.00 | 122.00 |
| Precinct No. 3 | 1,800.00 | 225.00 | 122.00 |
| Precinct No. 4 | 5,280.00 | 225.00 | 111.41 |
| Each Constable | 1,200.00 | 85.00 | 25.00 |
| Used Paper Ballots | | | |

EDNA JO SCOTT
Chairman of Democratic Executive Committee of Ward County, Texas

## ASSESSMENT OF CANDIDATES FO RDEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN VAL VERDE COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $ 9,350.00 | $ 510.02 | $ 120.90 |
| County Treasurer | 3,231.00 | 226.17 | 45.23 |
| County Judge | 10,549.00 | 738.43 | 147.68 |
| County Commissioner | 4,434.00 | 310.38 | 62.07 |
| District Clerk | 7,286.00 | 510.02 | 102.00 |
| Justice of Peace | | | |
| Precinct No. 2 | 3,300.00 | 231.00 | 46.20 |
| Used Paper Ballots | | | |

Assessment was 7% of years salary. Refund was 20% of assessment.

CHAS. ROE
Chairman of Democratic Executive Committee of Val Verde County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN GALVESTON COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $15,000.00 | $ 1,950.00 | $ 832.65 |
| County Treasurer | 12,000.00 | 1,560.00 | 666.12 |
| County Courts at Law | 18,000.00 | 2,340.00 | 999.18 |
| County Judge | 18,000.00 | 2,340.00 | 999.18 |
| County Commissioner | 12,000.00 | 1,560.00 | 666.12 |
| 122nd District Court | 26,000.00 | 3,380.00 | 1,443.26 |
| District Attorney | | 2,600.00 | |
| District Clerk | 15,000.00 | 1,950.00 | 848.25 |
| Justice of Peace | | | |
| Precinct No. 1B | 8,100.00 | 1,053.00 | 449.63 |
| Precinct No. 2 | 4,260.00 | 600.60 | 256.46 |
| Precinct No. 3 | 5,400.00 | 702.00 | 299.75 |
| Precinct No. 4 | 5,400.00 | 702.00 | 299.75 |
| Precinct No. 5 | 8,100.00 | 1,053.00 | 449.63 |
| Precinct No. 6 | 7,500.00 | 975.00 | 416.33 |
| Precinct No. 7 | 5,400.00 | 702.00 | 299.75 |
| Precinct No. 8 | 3,360.00 | 436.80 | 186.51 |
| Constable, Pct. 3 | 3,000.00 | 195.00 | 83.27 |
| Constable, Pct. 6 | 7,260.00 | 468.00 | 199.84 |
| Voting Machine | | | |

LLOYD CRISS JR.
Chairman of Democratic Executive Committee of Galveston County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN HIDALGO COUNTY

| | Term | Annual Salary | Assessment | Refund |
|---|---|---|---|---|
| County Clerk | 4 yr. | $13,200.00 | $ 1,716.00 | $ 366.66 |
| County Treasurer | 4 yr. | 10,605.00 | 1,378.65 | 294.58 |
| County Courts at Law | 4 yr. | 13,200.00 | 1,716.00 | 366.66 |
| County Judge | 4 yr. | 16,200.00 | 2,106.00 | 450.00 |
| County Commissioner | 4 yr. | 9,639.00 | 1,253.07 | 267.75 |
| 92nd District Court | 2 yr. | 24,500.00 | 1,592.50 | 340.27 |
| District Attorney | 4 yr. | 13,200.00 | 1,716.00 | 366.66 |
| District Clerk | 4 yr. | 13,200.00 | 1,716.00 | 366.66 |
| Justice of Peace, Pl. 1 | 2 yr. | 5,892.00 | 407.98 | 87.17 |
| Precinct No. 1, Pl. 2 | 4 yr. | 4,800.00 | 624.00 | 133.33 |
| Precinct No. 2 | 4 yr. | 3,600.00 | 468.00 | 100.00 |
| Precinct No. 3, Pl. 2 | 4 yr. | 2,520.00 | 327.60 | 70.00 |
| Precinct No. 4, Pl. 2 | 4 yr. | 4,200.00 | 546.00 | 116.67 |
| Precinct No. 5 | 4 yr. | 4,800.00 | 624.00 | 133.33 |
| Precinct No. 6, Pl. 2 | 4 yr. | 6,180.00 | 803.40 | 169.53 |
| Precinct No. 7, Pl. 2 | 4 yr. | 5,700.00 | 741.00 | 158.33 |
| Precinct No. 8, Pl. 2 | 4 yr. | 6,103.00 | 793.39 | 169.53 |
| Public Weigher, Precinct 5 | | Fees | 50.00 | 10.68 |
| Co. Supt. of Schools | 4 yr. | 12,000.00 | 1,560.00 | 333.33 |
| Voting Machine | | | | |
| Paper ballots used only for absentee voting | | | | |

MORRIS ATLAS
Chairman of Democratic Executive Committee of Hidalgo County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN JEFFERSON COUNTY

| | No. of Candidates | Annual Salary | Assessment | Refund |
|---|---|---|---|---|
| County Clerk | 1 | $14,400.00 | $ 2,400.00 | $ 1,008.00 |
| County Treasurer | 1 | 14,400.00 | 2,400.00 | 1,008.00 |
| County Courts at Law | 2 | 19,800.00 | 3,300.00 | 1,386.00 |
| | | | Each | Each |
| County Judge | 2 | 19,400.00 | 3,233.33 | 1,359.00 |
| | | | Each | Each |
| County Commissioner | 2 | 14,400.00 | 2,400.00 | 1,008.00 |
| | | | Each | Each |
| 58th District Court | 1 | 27,000.00 | 4,500.00 | 1,890.00 |
| 60th District Court (2-yr. Term) | 2 | 27,000.00 | 2,250.00 | 945.00 |
| | | | Each | Each |
| 172nd District Court | 1 | 27,000.00 | 4,500.00 | 1,890.00 |
| Domestic Relations | 1 | 27,000.00 | 4,500.00 | 1,890.00 |
| Criminal Dist. Court | 1 | 27,000.00 | 4,500.00 | 1,890.00 |
| District Attorney | 3 | 19,800.00 | 3,300.00 | 1,386.00 |
| | | | Each | Each |
| District Clerk | 1 | 14,400.00 | 2,400.00 | 1,008.00 |
| Justice of Peace | | | | |
| Precinct No. 1, Place 2 | 1 | 12,840.00 | 2,240.00 | 940.00 |
| Precinct No. 2, Place 2 | 2 | 12,840.00 | 2,240.00 | 940.00 |
| | | | Each | Each |
| Precinct No. 3 | 4 | 2,880.00 | 480.00 | 201.60 |
| | | | Each | Each |
| Precinct No. 4 | 1 | 12,840.00 | 2,240.00 | 849.99 |
| Precinct No. 5 | 2 | 4,920.00 | 820.00 | 344.40 |
| | | | Each | Each |
| Precinct No. 7 | 1 | 12,840.00 | 2,240.00 | 940.00 |
| Voting Machine | | | | |

GEORGE W. COWART
Chairman of Democratic Executive Committee of Jefferson County, Texas

## ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN DALLAS COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $20,000.00 | $ 4,800.00 | $ 1,600.00 |
| County Treasurer | 19,500.00 | 4,680.00 | 1,560.00 |
| County Courts at Law | 23,000.00 | 5,520.00 | 1,840.00 |
| County Judge | 27,000.00 | 6,480.00 | 2,160.00 |
| County Commissioner | 23,000.00 | 5,520.00 | 1,840.00 |
| 11th Judicial District Court | 28,000.00 | 6,720.00 | 2,240.00 |
| 2nd Criminal District Court | 28,000.00 | 6,720.00 | 2,240.00 |
| 2nd Domestic District Court | 28,000.00 | 6,720.00 | 2,240.00 |
| 2nd Juvenile District Court | 28,000.00 | 6,720.00 | 2,240.00 |
| District Attorney | 25,000.00 | 6,000.00 | 2,000.00 |
| District Clerk | 20,000.00 | 4,800.00 | 1,600.00 |
| Justice of Peace | | | |
| Precinct No. 1 | 18,000.00 | 4,320.00 | 1,440.00 |
| Precinct No. 2 | 12,700.00 | 3,048.00 | 1,016.00 |
| Precinct No. 3 | 12,700.00 | 3,048.00 | 1,016.00 |
| Precinct No. 4 | 12,700.00 | 3,048.00 | 1,016.00 |
| Precinct No. 5 | 10,700.00 | 2,568.00 | 856.00 |
| Precinct No. 6 | 12,700.00 | 3,048.00 | 1,016.00 |

| | | | |
|---|---|---|---|
| Precinct No. 7 | 18,000.00 | 4,320.00 | 1,440.00 |
| Precinct No. 8 | 12,700.00 | 3,048.00 | 1,016.00 |
| Voting Machine | | | |

EARL LUNA
Chairman of Democratic Executive
Committee of Dallas
County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970
FOR COUNTY OFFICES IN BEXAR COUNTY

| | Annual Salary | Assessment | Refund |
|---|---|---|---|
| County Clerk | $15,000.00 | $ 4,200.00 | $ 1,066.86 |
| County Treasurer | 14,000.00 | 3,920.00 | 995.73 |
| County Courts at Law | 18,500.00 | 5,180.00 | 1,315.79 |
| County Judge | 22,500.00 | 6,300.00 | 1,600.28 |
| County Commissioner | 15,000.00 | 4,200.00 | 1,066.86 |
| 45th District Court | 28,000.00 | 7,840.00 | 1,991.46 |
| 144th District Court | 28,000.00 | 7,840.00 | 1,991.46 |
| 150th District Court | 28,000.00 | 7,840.00 | 1,991.46 |
| 175th District Court | 28,000.00 | 4,230.00 | 1,074.48 |
| 186th District Court | 28,000.00 | 7,840.00 | 1,991.46 |
| 187th District Court | 28,000.00 | 7,840.00 | 1,991.46 |
| District Attorney | 20,500.00 | 5,740.00 | 1,458.04 |
| District Clerk | 15,000.00 | 4,200.00 | 1,066.86 |
| Justice of Peace | | | |
| Precinct No. 1, Pl. 2 | 12,000.00 | 3,360.00 | 853.48 |
| Precinct No. 2 | 8,200.00 | 2,800.00 | 1,087.21 |
| Precinct No. 3 | 8,200.00 | 2,800.00 | 1,087.21 |
| Precinct No. 4 | 8,200.00 | 2,800.00 | 1,087.21 |
| Precinct No. 5 | 8,200.00 | 2,800.00 | 1,087.21 |
| County Surveyor | | 300.00 | 76.20 |
| Voting Machine | | | |

LEONARD E. DAVIS
Chairman of Democratic Executive
Committee of Bexar
County, Texas

EXHIBIT "A"

| | |
|---|---|
| U. S. Representative—District 12 | $ 6,800.00 |
| U. S. Representative—District 6 | 1,000.00 |
| State Senator—District 10 | 300.00 |
| State Senator—District 22 | 300.00 |
| State Representative—Place 1 | 300.00 |
| State Representative—Place 2 | 300.00 |
| State Representative—Place 3 | 300.00 |
| State Representative—Place 4 | 300.00 |
| State Representative—Place 5 | 300.00 |
| State Representative—Place 6 | 300.00 |
| State Representative—Place 7 | 300.00 |
| State Representative—Place 8 | 300.00 |
| Judge, 67th Civil District Court (2 yr. term) | 4,450.00 |
| Judge, 141st Civil District Court | 8,900.00 |
| Judge, Criminal District Court No. 1 | 8,900.00 |
| Judge, Criminal District Court No. 3 | 8,900.00 |
| Judge, Criminal District Court No. 4 | 8,900.00 |
| Judge, Domestic Relations Court No. 1 | 8,900.00 |
| Judge, Domestic Relations Court No. 2 | 8,900.00 |
| Judge, Domestic Relations Court No. 4 | 8,900.00 |

| | |
|---|---|
| District Attorney | 7,800.00 |
| Judge, County Court at Law | 6,650.00 |
| Judge, County Criminal Court No. 1 | 6,650.00 |
| Judge, County Criminal Court No. 2 | 6,650.00 |
| Judge, County Criminal Court No. 3 | 6,650.00 |
| Judge, County Probate Court | 6,650.00 |
| County Judge | 6,800.00 |
| District Clerk | 6,800.00 |
| County Clerk | 6,800.00 |
| County Treasurer | 5,325.00 |
| County Surveyor | 50.00 |
| County Weigher | 50.00 |
| County Commissioner—Precinct 2 | 6,100.00 |
| County Commissioner—Precinct 4 | 6,100.00 |
| Justice of the Peace, Precinct 1, Place 2 | 4,700.00 |
| Justice of the Peace, Precinct 2 | 4,700.00 |
| Justice of the Peace, Precinct 3 | 2,900.00 |
| Justice of the Peace, Precinct 4 | 50.00 |
| Justice of the Peace, Precinct 5 | 125.00 |
| Justice of the Peace, Precinct 6 | 300.00 |
| Justice of the Peace, Precinct 7 | 50.00 |
| Justice of the Peace, Precinct 8 | 600.00 |

## DEMOCRATIC EXECUTIVE COMMITTEE—EL PASO, TEXAS
## SCHEDULE OF AMOUNTS RECEIVED FROM AND AMOUNTS RETURNED TO CANDIDATES

| Name | Office | Receipts | Refunds |
|---|---|---|---|
| Wesley Smith, | Sheriff of El Paso County | $ 960.00 | $ 427.11 |
| Malcolm McGregor, | State Representative | 75.00 | 20.99 |
| M. V. Ward, | Judge, County Court at Law | 1,480.00 | 414.23 |
| W. L. Fowler, | County Treasurer | 960.00 | 268.69 |
| L. R. Downey, | State Representative | 75.00 | 20.99 |
| F. A. Hill, | Justice of the Peace | 1,219.30 | 341.27 |
| R. E. Cunningham, | Judge 65th Judicial District | 1,490.00 | 417.03 |
| Maude Issaacs, | State Representative | 75.00 | 20.99 |
| Hal Dean, | State Representative | 75.00 | 20.99 |
| Ben Mejia, | Justice of the Peace | 1,328.40 | 371.80 |
| Don Williams, | State Representative | 75.00 | 20.99 |
| John E. Blaine, | State Representative | 75.00 | 20.99 |
| J. W. Callison, | County Commissioner | 960.00 | 268.69 |
| Joe Villa, | Constable, Precinct 1 | 300.00 | 83.96 |
| W. L. Black, | State Representative | 75.00 | 20.99 |
| T. H. Apodaca, | Justice of the Peace | 225.00 | 62.97 |
| J. W. Fields, | County Clerk | 1,480.00 | 414.23 |
| John Frizzell, | Sheriff of El Paso County | 740.00 | 207.11 |
| Hans Brockmoeller, | Judge, 120th Judicial District | 2,980.00 | 834.07 |
| J. T. Rutherford, | U. S. Representative | 135.84 | 38.02 |
| J. W. A. Johnson, | District Clerk | 1,480.00 | 414.23 |
| R. E. Bailey, | Sheriff of El Paso County | 740.00 | 207.11 |
| W. R. Adair, | County Commissioner, Precinct No. 4 | 960.00 | 268.69 |
| J. T. Bean, | County School Superintendent | 1,960.80 | 548.80 |
| Toms Mays, | County Commissioner, Precinct No. 4 | 960.00 | 268.69 |
| Rod Davenport, | County Commissioner, Precinct No. 2 | 960.00 | 268.69 |
| R. E. Wilson, | State Representative | 75.00 | 20.99 |
| Harold Duncan, | Justice of the Peace | 353.74 | 99.00 |
| R. E. Crawford, | Judge, County Court at Law | 1,480.00 | 414.23 |
| C. J. Burk, | Sheriff of El Paso County | 740.00 | 207.11 |
| Anita Blair, | State Representative | 75.00 | 20.99 |
| Ken Braxton, | County Judge | 1,780.00 | 498.20 |

| | | |
|---|---|---|
| Woodrow Bean, County Judge | 1,780.00 | 498.20 |
| O. P. Ford, Justice of the Peace | 1,035.90 | 289.93 |
| Mauro Rosas, State Representative | 75.00 | 20.99 |
| Charles Windberg, Justice of the Peace | 960.00 | 268.69 |
| D. F. White, Justice of the Peace | 1,867.50 | 522.69 |
| Louis Carson, Sheriff of El Paso County | 740.00 | 207.11 |
| C. Ybarra, Constable, Precinct 1 | 300.00 | 83.96 |
| F. E. Wilson, County Commissioner, Precinct No. 2 | 960.00 | 268.69 |
| W. E. Hall, County Clerk | 1,480.00 | 414.23 |
| C. W. Foster, Constable, Precinct 1 | 300.00 | 83.96 |
| Louis C. Landon, County Surveyor | .20 | |
| Alan Fraser, Associate Justice | 206.76 | |
| Holvey Williams, Associate Justice | 206.76 | |
| W. G. Abbot, Associate Justice | 206.76 | |
| TOTALS | $36,466.96 | $10,191.29 |

Subject to comments attached.

## EL PASO COUNTY DEMOCRATIC EXECUTIVE COMMITTEE
## SCHEDULE OF AMOUNTS RECEIVED FROM AND AMOUNTS RETURNED TO CANDIDATES

| Name | Office | Deposit | Refunded | To be Refunded |
|---|---|---|---|---|
| William E. Ward | 34th District Judge | $ 1,073.00 | $ 418.06 | $ 11.24 |
| Robert E. Cunningham | 65th District Judge | 3,220.00 | 1,254.19 | 33.73 |
| Charles W. (Chuck) Foster | Constable Precinct No. 1 | 1,000.00 | 421.75 | 11.35 |
| Dick F. Davis | County Commissioner, Precinct No. 1 | 1,534.00 | 597.59 | 16.07 |
| Texas S. Ward | Justice of the Peace, Precinct No. 1, Place 1 | 1,200.00 | 467.25 | 12.56 |
| William S. Clayton | Dist. Attorney, 34th Dist. | 800.00 | 312.32 | 8.40 |
| Jack Fant | County Attorney | 2,200.00 | 857.03 | 23.03 |
| Frank Owen | State Senate, 29th Dist. | 75.00 | 29.51 | .79 |
| Jim C. Langdon | Chief Justice, Court of Civil Appeals | 297.60 | — | — |
| David E. Mulcahy | 41st District Judge | 3,220.00 | 1,254.19 | 23.05 |
| R. E. Bailey | Sheriff | 2,200.00 | 857.03 | 23.05 |
| Alfredo Arrigucci | Constable, Precinct No. 4 | 276.00 | 106.97 | 2.88 |
| Gene Strachan | Constable, Precinct No. 5 | 276.00 | 106.97 | 2.88 |
| John E. (Red) Blaine | State Representative, Place 2 | 75.00 | 29.51 | .79 |
| R. R. Deason | County Tax Assessor | 2,400.00 | 934.49 | 25.13 |
| Maud Isaacs | State Representative, Place 1 | 75.00 | 29.51 | .79 |
| Dick Wilson | Justice of the Peace, Precinct 7 | 75.00 | 29.51 | .79 |
| Rogelio Sanchez | County Commissioner, Precinct 3 | 1,534.00 | 597.59 | 16.07 |
| J. T. Rutherford | U. S. Representative, 16th District | 236.84 | 93.45 | 2.52 |
| Baker S. Etheridge | County Commissioner, Precinct 3 | 1,534.00 | 597.59 | 16.07 |
| Malcolm McGregor | State Representative, Place 4 | 75.00 | 29.51 | .79 |
| Willis C. Nabhan | Constable, Precinct 7 | 276.00 | 106.97 | 2.88 |
| Tony Apodaca | County Commissioner, Precinct 3 | 1,534.00 | 597.59 | 16.07 |
| Pat Guerra | Constable, Precinct 5 | 276.00 | 106.97 | 2.88 |
| Ben Nunez | Constable, Precinct 8 | 276.00 | 106.97 | 2.88 |
| Ray Marantz | County Commissioner, Precinct 1 | 1,534.00 | 597.59 | 16.07 |
| Mauro Rosas | State Representative, Place 3 | 75.00 | 29.51 | .79 |
| Ben Mejia | Justice of Peace, No. 8 | 1,261.50 | 491.84 | 13.23 |
| Antonio Trujillo, Sr. | Constable, Precinct 4 | 276.00 | 106.97 | 2.88 |
| John A. Morce | Constable, Precinct 6 | 276.00 | 106.97 | 2.88 |
| L. R. Downey | State Representative, Place 1 | 75.00 | 29.51 | .79 |
| Victor Beltran | Constable, Precinct 2 | 276.00 | 106.97 | 2.88 |
| Martin Apodaca | Constable, Precinct 3 | 276.00 | 106.97 | 2.88 |
| A. H. Sanchez | Justice of Peace, Precinct 3 | 159.60 | 62.71 | 1.67 |

| | | | |
|---|---|---|---|
| Dan Duke, State Representative, Place 2 | 75.00 | 29.51 | .79 |
| Don Williams, State Representative, Place 2 | 75.00 | 29.51 | .79 |
| Pierce Atwater, County Treasurer | 1,680.00 | 655.38 | 17.62 |
| Totals | $31,557.54 | $12,295.96 | $ 330.86 |

## EL PASO COUNTY DEMOCRATIC PARTY TRUST FUND FOR FILING FEES
## SCHEDULE OF CANDIDATES' FILING FEES RECEIVED, REFUNDED AND PAYABLE
## JANUARY 10 THROUGH OCTOBER 30, 1964

| | Filing Fees Received | Amount Refunded | Balance to be Refunded |
|---|---|---|---|
| E. Aleman | $ 50.00 | $ 19.89 | $ .50 |
| C. Anderson | 1,657.60 | 695.97 | 17.50 |
| L. Anderson | 100.00 | 39.77 | 1.00 |
| V. Beltran | 276.00 | 119.31 | 3.00 |
| E. Berliner | 933.34 | 397.70 | 10.00 |
| J. Blaine | 100.00 | 39.77 | 1.00 |
| J. Callison | 100.00 | 39.77 | 1.00 |
| J. Christie | 100.00 | 39.77 | 1.00 |
| G. Cook | 100.00 | 39.77 | 1.00 |
| R. Cunningham | 3,220.00 | 1,352.18 | 34.00 |
| B. Dooley | 1,500.00 | 636.32 | 16.00 |
| L. Downey | 100.00 | 39.77 | 1.00 |
| D. Drake | 1,657.60 | 695.97 | 17.50 |
| R. L. Elliott | 2,640.00 | 1,113.56 | 28.00 |
| R. R. Elliott | 276.00 | 119.31 | 3.00 |
| C. Evans | 100.00 | 39.77 | 1.00 |
| J. Fant | 2,400.00 | 994.25 | 25.00 |
| C. Foster | 1,200.00 | 497.13 | 12.50 |
| E. Fuentes | 100.00 | 39.77 | 1.00 |
| M. Gallegos | 276.00 | 119.31 | 3.00 |
| G. Garcia | 1,029.21 | 437.47 | 11.00 |
| L. Gauthier | 276.00 | 119.31 | 3.00 |
| W. Haddad | 100.00 | 39.77 | 1.00 |
| F. Hart | 1,080.00 | 457.36 | 11.50 |
| R. Havekast | 155.00 | 59.66 | 1.50 |
| M. Isaacs | 100.00 | 39.77 | 1.00 |
| A. Lara | 276.00 | 119.31 | 3.00 |
| E. Larkin | 276.00 | 119.31 | 3.00 |
| M. McGregor | 1,500.00 | 636.32 | 16.00 |
| D. Mann | 100.00 | 39.77 | 1.00 |
| B. Mejia | 1,029.21 | 437.47 | 11.00 |
| B. Moore | 1,080.00 | 457.36 | 11.50 |
| J. Morce | 276.00 | 119.31 | 3.00 |
| W. Bosby | 50.00 | 19.89 | .50 |
| D. Mulcahy | 3,220.00 | 1,352.18 | 34.00 |
| R. Muniz | 100.00 | 39.77 | 1.00 |
| W. Nabhan | 276.00 | 119.31 | 3.00 |
| B. Nunez | 276.00 | 119.31 | 3.00 |
| R. Rogers | 2,400.00 | 994.25 | 25.00 |
| R. Sanchez | 1,657.60 | 695.97 | 17.50 |
| R. Scroggins | 100.00 | 39.77 | 1.00 |
| W. Snelson | 100.00 | 39.77 | 1.00 |
| J. Stockmeyer | 100.00 | 39.77 | 1.00 |
| G. Stracham | 276.00 | 119.31 | 3.00 |
| M. Sullivan | 2,400.00 | 994.25 | 25.00 |
| C. Terrazas | 2,640.00 | 1,113.56 | 28.00 |

## EL PASO COUNTY DEMOCRATIC PARTY TRUST FUND FOR FILING FEES
## SCHEDULE OF CANDIDATES' FILING FEES RECEIVED, REFUNDED AND PAYABLE
## JANUARY 10 THROUGH OCTOBER 27, 1966

| | Filing Fees Received | Amount Refunded | Balance to be Refunded |
|---|---|---|---|
| A. Alva | $ 100.00 | $ 40.00 | $ .74 |
| J. G. Bennett | 1,676.16 | 670.46 | 12.37 |
| E. F. Berliner | 4,020.00 | 1,608.00 | 29.66 |
| S. Blackham | 1,676.16 | 670.46 | 12.37 |
| J. E. Blaine | 100.00 | 40.00 | .74 |
| B. Boling | 934.00 | 373.60 | 6.89 |
| H. E. Brockmoller | 4,020.00 | 1,608.00 | 29.66 |
| R. Burdette | 100.00 | 40.00 | .74 |
| S. Callan | 2,700.00 | 1,080.00 | 19.92 |
| J. Christie | 100.00 | 40.00 | .74 |
| A. R. Clark | 1,680.80 | 672.32 | 12.40 |
| C. Coldwell | 2,700.00 | 1,080.00 | 19.92 |
| R. E. Crawford | 2,400.00 | 960.00 | 17.71 |
| H. E. Dean | 1,800.00 | 720.00 | 13.28 |
| L. R. Downey | 100.00 | 40.00 | .74 |
| J. W. Fields | 2,400.00 | 960.00 | 17.71 |
| A. P. Ford | 260.00 | 104.00 | 1.92 |
| B. E. Greenwood | 1,676.16 | 670.46 | 12.37 |
| R. N. Havekast | 361.60 | 144.64 | 2.67 |
| J. W. A. Johnson | 2,400,00 | 960.00 | 17.71 |
| I. C. Landon | 50.00 | 20.00 | .37 |
| D. Mann | 100.00 | 40.00 | .74 |
| O. Medina | 50.00 | 20.00 | .37 |
| B. Mejia | 1,295.31 | 518.13 | 9.56 |
| P. C. Moreno | 100.00 | 40.00 | .74 |
| R. Muniz | 100.00 | 40.00 | .74 |
| J. M. Navar | 1,726.16 | 690.46 | 12.74 |
| G. Peinado | 100.00 | 40.00 | .74 |
| N. Perez, Jr. | 50.00 | 22.50 | .37 |
| A. A. Ratner | 100.00 | 40.00 | .74 |
| G. Rodriques | 2,400.00 | 960.00 | 17.71 |
| A. H. Sanchez | 559.70 | 223.88 | 4.13 |
| T. Santiestiban | 100.00 | 40.00 | .74 |
| R. Scaggins | 100.00 | 40.00 | .74 |
| R. Telles | 1,676.16 | 670.46 | 12.37 |
| D. F. White | 990.70 | 396.00 | 7.31 |
| R. C. White | 1,667.00 | 666.80 | 12.30 |
| C. Windberk | 900.00 | 360.00 | 6.64 |
| B. C. Lewis | 936.80 | 374.72 | 6.90 |
| R. Gonzales | 936.80 | 374.72 | 6.90 |
| R. Apadaca | 936.80 | 374.72 | 6.90 |
| W. R. Barragan | 936.80 | 374.72 | 6.90 |
| TOTAL | $47,017.11 | $18,809.33 | $ 346.91 |

## EL PASO COUNTY DEMOCRATIC PARTY TRUST FUND FOR FILING FEES
## SCHEDULE OF CANDIDATES' FILING FEES RECEIVED, REFUNDED AND PAYABLE
## DECEMBER 10, 1967 THROUGH OCTOBER 25, 1968

| | Filing Fees Received | Amount Refunded | Balance to be Refunded |
|---|---|---|---|
| A. Aguirre | $ 900.00 | $ 225.00 | $ 128.86 |
| E. Aleman | 276.00 | 69.00 | 39.37 |
| C. Anderson | 1,676.00 | 419.00 | 239.03 |
| J. J. Armes | 276.00 | 69.00 | 39.37 |
| L. J. Ayoub | 276.00 | 69.00 | 39.37 |
| D. Baird | 100.00 | 25.00 | 14.26 |
| V. Beltran | 276.00 | 69.00 | 39.37 |
| J. E. Blaine | 100.00 | 25.00 | 14.26 |
| B. Boling | 933.00 | 233.25 | 133.08 |
| C. Bush | 276.00 | 69.00 | 39.37 |
| J. Cano | 276.00 | 69.00 | 39.37 |
| R. G. Candelaria | 780.00 | 195.00 | 111.25 |
| J. Christie | 100.00 | 25.00 | 14.26 |
| M. Daeuble | 100.00 | 25.00 | 14.26 |
| J. N. Fant | 3,980.00 | 995.00 | 567.67 |
| C. W. Foster | 1,200.00 | 300.00 | 171.22 |
| R. J. Galvan | 3,980.00 | 995.00 | 567.67 |
| J. Gandara | 276.00 | 69.00 | 39.37 |
| B. J. Hopper | 276.00 | 69.00 | 39.37 |
| B. R. Howell | 2.65 | — | — |
| A. Lara | 276.00 | 69.00 | 39.37 |
| E. Larkin | 1,676.00 | 419.00 | 239.06 |
| J. M. Montes | 276.00 | 69.00 | 39.37 |
| B. Moore | 1,800.00 | 450.00 | 256.80 |
| P. Moreno | 100.00 | 25.00 | 14.26 |
| R. Muniz | 100.00 | 25.00 | 14.26 |
| W. C. Nabhan | 276.00 | 69.00 | 39.37 |
| M. Nicchio | 276.00 | 69.00 | 39.37 |
| T. Niland | 100.00 | 25.00 | 14.26 |
| B. Nunez | 276.00 | 69.00 | 39.37 |
| H. Pena | 2,880.00 | 720.00 | 410.77 |
| P. U. Raleigh | 276.00 | 69.00 | 39.37 |
| R. Ramos | 100.00 | 25.00 | 14.26 |
| S. Rosen | 100.00 | 25.00 | 14.26 |
| G. G. Rueda | 271.00 | 67.75 | 38.65 |
| R. Sanchez | 1,676.00 | 419.00 | 239.03 |
| T. Santiesteban | 100.00 | 25.00 | 14.26 |
| C. R. Schulte | 3,980.00 | 995.00 | 567.67 |
| R. Scoggins | 2,280.00 | 720.00 | 410.77 |
| E. Seal | 271.00 | 67.75 | 38.65 |
| D. J. Snooks | 900.00 | 225.00 | 128.36 |
| M. Sullivan | 2,400.00 | 600.00 | 342.31 |
| C. Terrazas | 2,880.00 | 720.00 | 410.77 |
| W. E. Ward | 1,327.00 | 331.75 | 189.27 |
| R. Whitaker | 271.00 | 67.75 | 38.65 |
| R. White | 2,000.00 | 500.00 | 285.26 |
| C. J. Ybarra | 276.00 | 69.00 | 39.37 |
| TOTALS | $43,803.65 | $10,950.25 | $ 6,247.42 |

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

CA 3-3744-C — 3733-C

CA 3-3739-C

(Title omitted in printing)

## STIPLULATION OF FACT

The Plaintiffs and Defendants in the above styled and numbered causes, do hereby stipulate as follows:

1. That the below listed list of officer's salaries for each year are as shown:

Salaries of State Officers

Governor — $55,000
Lt. Governor — $4,800
Attorney General — $29,000
State Treasurer — $29,000
Commissioner of General Land Office — $29.000
State Comptroller — $29,000
Supreme Court Judge — $29,000
Court of Criminal Appeals Judge — $29,000
State Agriculture Commissioner — $29,000
State Railroad Commissioner — $29,000
Court of Civil Appeals Judge — $26,000

Signed this 6th day of October, 1970.

WILLIAM J. CRAIG
Capitol Station
Austin, Texas 78711
CHARLES F. HERRING
900 Perry-Brooks Bldg.
Austin, Texas 78701

ESTIL VANCE, JR.
1800 First National Bank Bldg.
Fort Worth, Texas 76102
MARK F. HOWELL
508 Southwest National Bank Bldg.
El Paso, Texas 79901
*Attorneys for All Defendants*

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*Attorneys for All Plaintiffs*

(Signature)
JOHN FLASHING

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

CA 3-3744-C — 3733-C

CA 3-3739-C

(Title omitted in printing)

## STIPULATION OF FACT

The Plaintiffs and Defendants in the above styled and numbered causes, do hereby stipulate as follows:

1. It is stipulated and agreed that the records of the County Clerk of Tarrant County, Texas, reflect that in Tarrant County the following offices were decided by run-off primaries held in the Democratic Primary in June in the following respective offices during the years 1958-68.

1958, Justice of the Supreme Court of Texas, District Clerk of Tarrant County, Texas, Judge of the Probate Court of Tarrant County, Texas, County Treasurer, Tarrant County, Texas, Representatives State House of Representatives, Place 1, 2, 4, 6, and Precinct Chairman, Tarrant County, Texas, Precinct 60 and 122.

1960, Judge, Court of Criminal Appeals, State of Texas, State House of Representatives, Place 1, 2, 6, 7, Sheriff, Tarrant County, County Commissioner, Precinct 3, Tarrant County, Constable, Precinct 4, Tarrant County, Constable, Precinct 7, Tarrant County, Precinct Chairman, Precinct 63, Precinct Chairman, Precinct 82, Precinct Chairman, Precinct 148.

1962, Governor for the State of Texas, Lieutenant Governor of Texas, Attorney General of Texas, Congressman at Large, Representatives, State House of Representatives, Place 1, 3 and 7, District Attorney, Tarrant County, Probate Judge, Tarrant County, District Clerk of Tarrant County, Justice of the Peace, Precinct 2, Tarrant County, Precinct Chairman for Precincts 14 and 140, Tarrant County, Texas.

1964, United States Congress, Congressman at Large, State Representative, State House of Representatives, Place 2.

1966, Attorney General of Texas, County Chairman, Tarrant County Democratic Party, Commissioner, Precinct 2, Tarrant County, Commissioner, Precinct 4, Tarrant County.

1968, Governor for the State of Texas, County Democratic Chairman, Tarrant County, Precinct Chairman, Precinct 64.

Signed this the 19th day of October, 1970.

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Dallas, Texas
*Attorneys for Plaintiffs*

(Signature)
JOHN FASHING

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C
3-Judge

VAN PHILLIP CARTER
versus
MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C
3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED
versus
ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUGIN JENKINS, INTERVENOR

CA 3-3739
3-Judge

WILLIAM PATE. ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED
versus
GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS
AND INDIVIDUALLY AND THE COUNTY DEM-
OCRATIC EXECUTIVE COMMITTEE OF EL
PASO COUNTY, TEXAS AND THE PRIMARY
COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA
L. SIFUENTES and MANUEL SAPIEN, on behalf

of themselves and all others similarly situated, and as members of U.N.I.O.N, Incorporated,
INTERVENORS

Before THORNBERRY, Circuit Judge, and HUGHES and TAYLOR, District Judges

TAYLOR, District Judge

In the above cases, the plaintiffs seek an injunction to restrain the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967)[1] and to have them declared unconstitutional.

> Art. 13.08 authorizes the county committee to make an assessment of the costs of running the primary and to apportion the cost in such a manner as in their judgment is just and equitable among the various candidates except for certain offices such as state senator and representative. "In making the assessment upon any candidate, the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made."
>
> Art. 13.08a provides for a maximum allowable assessments that can be made by the committees in counties according to the population.
>
> Arts. 13.15 and 13.16 regulate the filing fees for certain statewide offices.

These articles require candidates to pay filing fees as a condition to having their names placed on a ballot in a primary election.

The parties have stipulated that Plaintiff William Pate meets all qualifications to be a candidate in the Democratic Primary Elections for the office of County

[1]Art. 13.07a provides that a candidate for a state office must pay a deposit of $50.00 to the county chairman at the time he applies for a place on the ballot.

Commissioner of Precinct Four for El Paso County, Texas, except that he cannot pay the $50.00 deposit nor the $1424.00 assessment. Likewise, Plaintiff Theodore Wischkaemper meets all of the qualifications for County Judge of Tarrant County, Texas, except that he has not paid the $6,300.00 assessment fee.

Plaintiff Carter's application to be placed on the ballot for the office of Commissioner of the General Land Office was denied by the State Democratic Executive Committee because it was not notarized,[2] it was not accompanied by a filing fee,[3] and it was not accompanied by a notarized loyalty affidavit.[4]

In addition to the plaintiffs, Reubin Jenkins has been allowed to intervene as a voter who wished to vote for plaintiff Wischkaemper and Carlos Guzman, et al. have asked to be allowed to intervene as voters who desired to vote for Plaintiff Pate. The latter will be allowed to intervene. Fed. R. Civ. P. 24 (a) (2).

Plaintiffs claim that the filing fees deprive them of their right to run for office in violation of the due process and equal protection clauses of the Fourteenth Amendment because they cannot afford to pay the required fees. Intervenors claim that the filing fees deprive them of their right to vote for a candidate of their own choice in violation of the same sections of the Constitution. Specifically, it is alleged that the assessments are (1) exorbitant, arbitrary, capricious, irrelevant, unreasonable, outrageously high, (2) without any reasonable relation to any legitimate legislative purpose and not germane to one's ability to participate intelligently in the electoral process, and (3)

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[2]Tex. Election Code Ann. Art. 13.12 (1967).

[3]Tex. Election Code Ann. Art. 13.08 (1967).

[4]Tex. Election Code Ann. Art. 6.02 (1967).

discriminatory, in that some offices are assessed higher amounts than others.

A three-judge court was convened on April 3, 1970 in accordance with 28 U.S.C. § 2281 to hear the Plaintiffs' request for a preliminary injunction. The court allowed the names of Plaintiffs Pate and Wischkaemper to be placed upon the ballot without the payment of any fee. No fee would have to ever be paid if, on final determination of the merits, their claims are accepted by the court; but, should the court reject their claims, they would then be required to pay the challenged fees. Relief was denied as to Plaintiff Carter because he has not complied with filing requirements unrelated to filing fees and assessments. Neither Pate nor Wischkaemper won in their respective primary.

All plaintiffs have stated that they intend to become candidates for state office at the next election period. Even though Plaintiff Carter has failed to meet other requirements in addition to not paying the filing fee, the court need not pass upon his claim because the relief he seeks is the same as that sought by Plaintiffs Pate and Wischkaemper.

It is undisputed that primary elections of political parties are state action and subject to the Fourteenth Amendment. *Smith v. Allwright,* 321 U.S. 649, 88 L. Ed. 987, 64 S.Ct. 757 (1944).

Since the rights of the intervenors as voters will be determinative of the constitutionality of the laws here attacked, we deem it unnecessary to discuss the rights of the candidates.

The right to vote was defined as a "fundamental political right" in *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 30 L.Ed. 220 (1886). In more recent times the court has said,

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. *Reynolds v. Sims,* 377 U.S. 533, 561-62, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964).

The *Reynolds* court went further in describing the right to vote, saying it included the right to cast one's vote effectively.[*] The effectiveness of the vote there was quantitative in that it was an apportionment case. In *Williams v. Rhodes,* 393 U.S. 23, 30, 21 L.Ed.2d 24, 89 S.Ct. 5 (1968), the right to cast one's vote effectively was again discussed. The effectiveness of the vote in that case was qualitative in nature rather than quantitative in that the voters were desirous of voting for a specific candidate who espoused their political beliefs.

The right to choose one's candidate is not only a fundamental political right protected by the Fourteenth Amendment, it encompasses the First Amendment right "to associate for the advancement of political beliefs." *Williams v. Rhodes,* supra.

Whenever a First Amendment right is encumbered by the state, the burden is on the state to show that such infringement is necessary to support a compelling state interest.[*] The primary purpose of the

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[*] "Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature, modern and viable state government needs, and the constitution demands, no less." 377 U.S. at 565.

[*] "'The presumtion of constitutionality and the approval of 'rational' classifications in other types of enactments are based on an assumption that the institutions of state govern-

filing fee assessments under the Texas statutory scheme is to raise revenue. *Campbell v. Davenport,* 362 F.2d 624 (5th Cir. 1966). This "tax" is used by the party to cover the cost of the primary. All monies collected in excess of the cost of the primary are refunded to the candidate.

In order to qualify as a compelling state interest, the law must be shown to be "necessary and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin v. Florida,* 379 U.S. 184, 196, 13 L.Ed. 2d 222, 85 S.Ct. 283 (1964). The collection of revenue is, of course, a permissible and legitimate interest but under these circumstances not a compelling state interest. These assessments are not necessary to insure the collection of revenue. Approximately eighteen states do not require candidates to pay any filing fees to support the primary.[1] The State of Texas has been able to find other adequate means

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ment are structured so as to fairly represent all people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality." *Kramer v. Union School District,* 395 U.S. 621, 628 (1969).

"[T]he right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. In determining whether the state has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that 'only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting First Amendment freedoms.

"The state has here failed to show any 'compelling interest' which pustifies imposing such heavy burdens on the right to vote and to associate." *Williams v. Rhodes,* 393 U.S., at 31. See "The Supreme Court, 1968 Term," 83 Harv. L. Rev. 60, 93, n. 30 (1969).

[1]Colorado, Indiana, Iowa, Illinois, Kansas, Kentucky, Maine, Massachusetts, Michigan, New Mampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee and Vermont.

of collecting revenue which do not restrict the right to vote.* *United States v. State of Texas*, 252 F.Supp. 234, 252 (W.D.Tex. 1966).

By requiring this "tax" in the form of primary filing fees, the State of Texas has in effect imposed a wealth requirement directly upon the candidate and the voters they seek to represent. A standard of wealth has never been considered as relevant to one's intelligent participation in the electoral process. As the Supreme Court said in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668, 16 L.Ed. 2d 169, 86 S. Ct. 1079 (1966).

> We conclude that a state violates the Equal Protection clause of the Fourteenth Amendment whenever it makes the affluence of the voter or the payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying this or any other tax. . . .
>
> * * * *
>
> But we must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process.

The Court does not mean to imply that there is no compelling interest, pursuant to which the State may require a primary filing fee. We have limited our decision here to say that a filing fee violates the First

*The Secretary of State has already presented to the House Interim Committee on Elections proposed election law changes. It recognizes the exorbitant filing fees assessed in some counties and the unworkability of the present system in the future. It recommends that the primary expenses be borne not only by the candidate, but also by the county and state. *Office of the Secretary of State, Proposed Election Law Changes, A report to the 62nd Legislature of the State of Texas*, December 10, 1970.

Amendment and the due process and equal protection clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get his name on the ballot. Indeed, there may be other compelling interests which would justify some type of reasonable fee. The *Williams* court recognized that the State could have a compelling interest in regulating the ballot.*

In determining whether the State's interest in exacting a filing fee is sufficiently compelling, "we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes,* supra, p. 30. Here the high fee charged, in the thousands of dollars, for revenue purposes is not sufficient state interest when compared to the burden it places on the voters and their candidates. A "write-in" alternative would not bring about the needed balance on the "individual-state interest" scale and make these fees any more palatable. *Williams v. Rhodes, supra,* and *Jenness v. Little, supra.*

The Court is aware of the fact that in *Wetherington v. Adams, supra,* filing fees for a primary election were upheld as constitutional. The plaintiff in that case

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**Wetherington v. Adams,* 309 F.Supp. 318 (N.D.Fla., 1970) recognized this interest as a justification for a primary filing fee.

*Jenness v. Little,* 306 F.Supp. 925 (N.D.Ga., 1969) *appeal dismissed* 397 U.S. 94 (1970), also recognized this as a legitimate and possibly compelling state interest. However, the court there said that it could not be an absolute qualification. If used for this purpose, there should be some alternative provided. A pauper's affidavit and a supporting nominating petition could protect this interest and serve as an alternative to a filing fee.

was a candidate and the issues were decided on the basis of what were his rights vis-a-vis those of the state. While neither approving nor disapproving of the reasoning used or the results reached, we need only say that in the case at bar we have resolved the issues on the rights of the voters. The cases are, therefore, distinguishable.

In granting declaratory relief, we hold that the statutes are unconstitutional because they infringe upon the exercise of voting and associational rights without any compelling justification in violation of the First and Fourteenth Amendments. The State of Texas, through its political parties, will be enjoined from the enforcement of the Texas Election Code sections requiring filing fees and assessments of a candidate in order that his or her name be placed upon a primary ballot.

IN THE UNTED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER
versus
MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED
versus
ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED
versus
GEORGE A. McALMON, JR., CHAIRMAN OF
THE EL PASO COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL.

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA
L. SIFUENTES and MANUEL SAPIEN,
INTERVENORS

Before THORNBERRY, Circuit Judge, HUGHES,
and TAYOR, District Judges.

THORNBERRY, CONCURRING SPECIALLY:

At issue in the instant case is whether the State of Texas through the imposition of primary filing fees has unduly impinged upon the right of its citizens to associate for the advancement of political beliefs and the right of its qualified voters to vote and to cast their votes effectively. Because I am of the belief that it has, I concur in the result of this judgment.

The standard by which the constitutionality of these controverted election code provisions is to be measured is, as the majority points out, the *Williams* test:[1] Bearing in mind that only a compelling state interest can justify a state's limiting First Amendment freedoms, the Court must consider the facts and circumstances behind the law, the interests that the state claims to be protecting, and the interests of those who are disadvantaged by the classification. Accordingly, I examine, first, the interests of those disadvantaged by the provisions, and, secondly, the interests of the State.

At the very core of this dispute lies the First Amendment's guarantee of the right to engage in association

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[1]Defendants, relying primarily on *Snowden v. Hughes*, 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497 (1944), contend that this Court should not set aside the election code provisions unless they are grounded in a rationale wholly irrelevant to the achievement of a legitimate state interest, or unless they incorporate an element of intentional or purposeful discrimination. It is true that *Snowden* stated that "an element of intentional or purposeful discrimination" needs to be shown to demonstrate a denial of equal protection. *Snowden*, however, has been modified pro tanto by the language of *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), and by the rationale of *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970), wherein the Supreme Court found a denial of equal protection without an "invidious or purposeful discrimination."

for the advancement of beliefs and ideas[5] and the "fundamental political right" that constitutes the essence of a democratic society and is "preservative of all rights"—the right to vote.[6] In the State of Texas there is simply no way that a person can obtain the Democratic Party nomination other than by paying the filing fee and being elected. The election code includes no provision for nominating petitions at the party level. Moreover, under article 13.09[7] write-in voters may not be counted in primary elections, and no space on the ballot is provided for them. Consequently, voters are deprived of the opportunity to have their candidate considered for the Democratic Party nomination if he cannot post the filing fee.

Since in the overwhelming majority of Texas political offices nomination by the Democratic Party is tantamount to election, it is clear that restriction on entry into the primary may significantly impair the right to cast one's vote effectively. In addition, the right of association is abridged significantly in that a person unable to pay the filing fee must, with the aid of those desirous of supporting him, form a new party or run as an independent: They are precluded by the high filing fee from associating within the established party. Undeniably, then, the State's high primary filing fees impose significant burdens on the right to vote and to associate. The question determinative of this contro-

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[5] The Supreme Court has repeatedly held that freedom of association is protected by the First Amendment. *See, e.g., Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *United Mine Workers of America, Dist. 12 v. Illinois State Bar Assn.*, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1966); *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

[6] *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1964, 1071, 30 L.Ed. 220 (1886).

[7] Tex. Election Code Ann. Art. 13.09 (1967).

versy is whether there lies behind the high fees a State interest sufficiently compelling to justify the burdens.

Three State policies allegedly are furthered by this fee system. First, the State contends that the fees serve to limit candidacy to "serious" candidates. To discriminate against voters or candidates on the basis of the depth of their pocketbooks, however, is to wade into unconstitutional waters. *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 86 S. Ct. 1079, 16 L.Ed.2d 169 (1966); *Cipriano v. City of Houma,* 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969); *Turner v. Fouche,* 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970). It is no answer to proclaim that those candidates without substantial financial backing cannot seriously hope to win. The seriousness and legitimacy of a political effort is not to be measured by the bullion with which it is bulwarked. Though modern politics may dictate that low budgets do not win elections, it cannot be doubted that those with low budgets are entitled to try. *Thomas v. Mims,* — F.Supp. —. (S.D. Ala. C.A. No. 5702-69, 1970). Clearly, this first alleged justification is without sufficient merit to warrant the imposition of these burdens.

Secondly, Texas seeks to ground these high fees in the State interest of regulating the ballot to prevent confusion of voters. Although courts have indeed approved the objective of regulating the ballot,[8] the approval has been bestowed within the context of nominal or reasonable fees.[9] Defendants have pointed to

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[8] *See, e.g., Williams v. Rhodes,* 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Wetherington v. Adams,* 309 F.Supp. 318 (N.D.Fla. 1970); *Jenness v. Little,* 306 F.Supp. 925 (N.D.Ga. 1969), appeal dismissed 397 U.S. 94 (1970).

[9] *See, e.g., Bynum v. Burns,* 8th Cir. 1967, 379 F.2d 229; *Kenneweg v. Allegany County Com'rs,* 62 Atl. 249 (Md. 1905); *Socialist Party v. Uhl,* 103 P. 181 (Cal. 1909); *State*

no instances in which fees of the magnitude here challenged—up to $8,900—have received judicial sanction. The fact that virtually all states assess filing fees smaller by a factor of ten or more than those of Texas, and some states none at all, quite strongly indicates that other states have not found the imposition of exorbitant filing fees a *sine qua non* of regulating the ballot.[7] I do not deny that Texas may have a compelling interest in regulating its ballot, but I am of the opinion that the interest can justify, at the very most, only reasonable fees; it cannot impart validity to the amounts here challenged.

Texas also asserts that the filing fee scheme pays for the primary and thus not only avoids draining the State treasury but also allows Parties to remain entities independent of the State. The justification of keeping the Parties private and unsubjected to State interests is, under the circumstances of this case, not a strong one. The Party's role in conducting the primary is, after all, purely ministerial and quite extensively regulated by the State. Nor, in the light of the interests at stake, would the burden on the State treasury be onerous if Texas were to assume a substantial portion of the primary expenses. Indeed, as the majority points out, eighteen states require of candidates no filing fee to support the primary. Furthermore, although filing fees have been judicially sanctioned on grounds of contribution, defendants have pointed to no cases other than Texas cases that place

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*ex rel. Riggle v. Brodigan*, 143 P. 238 (Nev. 1914); *Bodner v. Gray*, 129 So.2d 419 (Fla. 1966); *State v. Nichols*, 97 P. 728 (Wash. 19—); *Wetherington v. Adams*, 309 F.Supp. 319 (1970).

[7] See Office of the Secretary of State, Proposed Election Law Changes, A Report to the 62nd Legislature of the State of Texas, December 10, 1970 at —.

the entire burden of primary expense upon the candidates. If Texas has a compelling interest in requiring primary fees for revenue purposes, the interest can justify no more than requiring a candidate to contribute a reasonable portion of the primary expenses attributable to his candidacy. The fees here challenged clearly do not fall within that ambit and must be invalidated.

I do not here undertake the task of determining what constitutes a reasonable fee. I would emphasize, however, that two of our most precious freedoms are at stake, and thus the dimensions of reasonableness within which the State may safely impose a fee are indeed low and narrow.[*]

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[*]This is especially true where, as in the instant case, the State has provided no alternative, such as a petition, to the filing fee.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER

vs.

MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED

vs.

ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED

vs.

GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS
AND INDIVIDUALLY AND THE COUNTY DEM-
OCRATIC EXECUTIVE COMMITTEE OF EL

PASO COUNTY, TEXAS AND THE PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES and MANUEL SAPIEN, on behalf of themselves and all others similarly situated, and as members of U.N.I.O.N., Incorporated,

INTERVENORS

**ORDER**

For the reason stated in the Opinions filed in the above styled cases, it is ORDERED, ADJUDGED and DECREED that Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are hereby declared to be unconstitutional because they infringe upon First Amendment rights without any compelling justification in violation of the First and Fourteenth Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code. Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967).

SIGNED and ENTERED this 21st day of December, 1970.

HOMER THORNBERRY, Circuit Judge

SARAH T. HUGHES, District Judge

W. M. TAYLOR, JR., District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
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CA 3-3635-C

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PASO COUNTY, TEXAS AND THE PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LUZANO, ANDREA L. SIFUENTES AND MANUEL SAPIEN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, AND AS MEMBERS OF U.N.I.O.N., INCORPORATED, INTERVENORS

## NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

Notice is hereby given that Martin Dies, Jr., Secretary of State of the State of Texas, Dr. Elmer C. Baum, Chairman of the State Democratic Executive Committee, Dr. J. D. Tomme, Jr., Chairman of the Tarrant County Democratic Executive Committee, George A. McAlmon, Jr., Chairman of the County Democratic Executive Committee of El Paso County, Texas, the County Democratic Executive Committee of El Paso County, Texas, and the Primary Committee, the Defendants in the above styled and numbered cause, hereby appeal to the Supreme Court of the United States from the following portion of the judgment entered in this action on the 21st day of December, 1970:

> "For the reasons stated in the Opinions filed in the above styled cases, it is ORDERED, ADJUDGED and DECREED that Tex. Election Code Ann. Arts 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are hereby declared to be unconstitutional because they infringe upon First Amendment rights without any compelling justification in violation of the First and Fourteenth Amendments and that the State of Texas, through its po-

litical parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967)."

II.

This appeal is taken pursuant to 28 U.S.C. §1253.

III.

The Clerk will please prepare and certify a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States in accordance with Rule 12 of the Rules of the United States Supreme Court.

IV.

The following question is presented by this appeal: Whether Artieles 13.07a, 13.08, 13.08a, 13,15, and 13.16 of the Texas Election Code are unconstitutional in that they violate the First and Fourteenth Amendments of the Constitution of the United States.

Respectfully submitted,

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*Attorneys for Defendants*

## PROOF OF SERVICE

I, Pat Bailey, one of the attorneys for the Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that one the ____ day of February, 1971, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto as follows: on all of the Plaintiffs and Intervenors herein by mailing copies in duly addressed envelopes with First Class Postage Prepaid to their respective attorneys of record: Mr. H. Averill Sweitzer, Fifth Floor, Manor House, Dallas, Texas 75202; Mr. A. L. Crouch, 109 Taylor, Fort Worth, Texas 76102; Mr. John L. Fashing, 608 Southwest National Bank Building, El Paso, Texas 79901; Mr. Fred Weldon and Mr. Stuart R. Abelson, 119 N. Stanton Street, Room 215, El Paso, Texas 79901.

PAT BAILEY

SUPREME COURT, U. S.

70-128

1606

Supreme Court, U.S.
FILED
APR 21 1971
E. ROBERT SEAVER, CLERK

NO. _____

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

MARTIN DIES, JR., ET AL.,
*Appellants*

vs.

DAN PHILLIP CARTER, ET AL.,
*Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

## JURISDICTIONAL STATEMENT

CHARLES F. HERRING
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## INDEX


| | Page |
|---|---|
| OPINION BELOW | 2 |
| JURISDICTION | 2 |
| QUESTION PRESENTED | 4 |
| STATUTES INVOLVED | 4 |
| STATEMENT | 4 |
| THE QUESTIONS ARE SUBSTANTIAL | 6 |
| I. Should Voting Right Principles be Extended Into the Area of Filing Fees for Candidates In the Primary Elections of Political Parties | 6 |
| II. Has the Court Below Followed the Proper Standards or Guidelines in Passing Upon The Challenged Provisions of the Texas Election Code | 17 |
| III. Does There Exist a Constitutionally Sufficient Reason or Even a Compelling Reason for the Enactment of the Challenged Provisions of the Texas Election Code | 20 |
| CONCLUSION | 26 |
| CERTIFICATE OF SERVICE | 28 |
| APPENDIX "A" | 1a |
| APPENDIX "B" | 3a |
| APPENDIX "C" | 18a |
| APPENDIX "D" | 26a |

## AUTHORITIES

Cases: Page


Bodner v. Gray, 129 So.2d 419 (1961) ..... 12

Bynum v. Burns, 379 F.2d 229 (Eighth Circuit 1967) ..... 10

Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) ..... 17, 18

Cipriano v. City of Houma, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969) ..... 17, 19

City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) ..... 17

Communist Party v. Control Board, 367 U.S. 1 (1961) ..... 15

Dandridge v. Williams, 397 U.S. 471 (1970) ..... 16, 17

Flast v. Cohen, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968) ..... 3

Florida Lime & Avocado Growers v. Jacobsen, 362 U.S. 73, 80 S.Ct. 568, 4 L.Ed.2d 568 (1960) ..... 4

Fowler v. Adams, 315 F.Supp.——, 27 L.Ed.2d 23 ..... 14

Gray v. Kenny, 158 P.2d 961 (Calif. 1945) ..... 12

Griswold v. Connecticut, 381 U.S. 479 (1965) ..... 15

Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) ..... 7, 18

Howe v. Brown, 319 F.Supp. 862 (1970) ..... 20

Jenness v. Little, 306 F.Supp. 925 (1969) ..... 14

Kenneweg v. Allegany County Com'rs., 62 Atl. 249 (Md. 1905) ..... 12

Kramer v. Union Free School District, 395 U.S. 621 (1969) ..... 7, 17, 18

McDonald v. Board of Election Commissioners of Chicago, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969) ..... 18

Cases—Continued Page

McPherson v. Blacker, 146 U.S. 1, 13 S.Ct. 3, 36 L.Ed. 869 (1892) ..... 8

Patton v. Withycombe, 159 P. 78 (Ore. 1916) ..... 12

Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) ..... 7, 18

Ritter v. Douglass, 109 P. 444 (Nevada 1910) ..... 12

Snowden v. Hughes, 321 U.S. 1, 88 L.Ed. 497 ..... 9, 10

Socialist Party v. Uhl, 103 P. 181 (Calif. 1909) ..... 12

State v. Nichols, 50 Wash. 508, 97 P. 728 ..... 12

State ex rel Riggle v. Brodigan, 143 P. 238 (Nevada 1914) ..... 12

United States v. Georgia Pub. Serv. Comm., 371 U.S. 285, 83 S.Ct. 397, 9 L.Ed.2d 317 (1963) ..... 4

Wetherington v. Adams, 309 F.Supp. 318 (1970) ..... 14, 21

Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) ..... 13, 14, 21

Yick Wo v. Hopkins, 118 U.S. 356, 30 L.Ed. 220 (1886) ..... 7

Zemel v. Rush, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965) ..... 4

UNITED STATES STATUTES:

28 U.S.C. §1253 ..... 3

28 U.S.C. §1343(3) ..... 2

28 U.S.C. §1343(4) ..... 2

28 U.S.C. §2201 ..... 2

28 U.S.C. §2202 ..... 2

28 U.S.C. §2101(b) ..... 3

28 U.S.C. §2281 ..... 3

28 U.S.C. §2284 ..... 3

42 U.S.C. §1983 ..... 2

CONSTITUTION OF TEXAS:

Article IV, Sections 1 and 10 ..... 3
Article VI, Section 4 ..... 11

TEXAS ELECTION CODE:

Article 1.03 ..... 3
Article 6.05, Subdivisions 3 and 5 ..... 24
Article 6.05b ..... 24
Article 6.06a ..... 24
Article 7.14, Sections 16 and 16a ..... 24
Article 7.15, Subdivision 11, Paragraph (c) (8) ..... 24
Subdivision 19, Paragraphs (a) and (c) ..... 24
Subdivision 20, Paragraph (k) ..... 24
Article 13.07a ..... 1, et seq.
Article 13.08 ..... 1, et seq.
Article 13.08a ..... 1, et seq.
Article 13.15 ..... 1, et seq.
Article 13.16 ..... 1, et seq.
Article 13.47 ..... 24
Article 13.47a ..... 24
Article 13.50 ..... 24
Article 13.54 ..... 24

NO. _____

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

MARTIN DIES, JR., ET AL.,

*Appellants*

vs.

DAN PHILLIP CARTER, ET AL.,

*Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

## JURISDICTIONAL STATEMENT

The Appellants appeal from that portion of the judgment of the United States District Court for the Northern District of Texas, Dallas Division, entered on the 21st day of December, 1970, declaring Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code to be unconstitutional and enjoining the State of Texas, through its political parties, from the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code. Appellants submit this Statement to show the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

## OPINION BELOW

The opinion of the United States District Court for the Northern District of Texas, San Antonio Division, rendered on the 18th day of December, 1970, which is not yet reported, is attached as Appendix "A". The order or judgment of the Court, entered on the 21st day of December, 1970, is attached at Appendix "B".

## JURISDICTION

Appellees invoked the jurisdiction of the court below under the First and Fourteenth Amendments of the United States Constitution and 28 U.S.C. §§1343(3), 1343(4), 2201, 2202, and 42 U.S.C. §1983, seeking to have the Appellants enjoined from the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code. In addition, the Appellees sought to have the court below declare the aforesaid provisions of the Texas Election Code unconstitutional. The challenged provisions of the Texas Election Code are attached as Appendix "C". Suit was brought by the Appellees against Martin Dies, Jr., Secretary of State of the State of Texas, and Preston Smith, Governor of Texas. Also named by Appellees as Defendants were the Chairman of the State Democratic Executive Committee, the Chairman of the Tarrant County Democratic Executive Committee, the Chairman of the County Democratic Executive Committee of El Paso County, Texas. The instant proceeding initially commenced as three separate lawsuits which were consolidated by the court below.

The Governor of the State of Texas, Preston Smith, is the chief executive officer of the State of Texas and has the responsibility of executing the laws of the State

of Texas. Sections 1 and 10 of Article IV of the Constitution of Texas. The Secretary of State of the State of Texas, Martin Dies, Jr., is the chief election officer of the State of Texas. Article 1.03 of the Texas Election Code. The remaining Appellants are either county or statewide officials of the Democratic Party in Texas.

As Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code have statewide application and are not local in nature, and as the constitutionality of such statutes were challenged by the Appellees in the court below, a three-judge district court was convened to hear the case pursuant to 28 U.S.C. §2284, as required by 28 U.S.C. §2281.

The court below filed an opinion on the 18th day of December, 1970 (see Appendix "A"), holding Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code to be unconstitutional, and judgment decreeing such statutory provisions unconstitutional was entered on the 21st day of December, 1970 (see Appendix "B"). The judgment of the court below further decreed that the State of Texas, through its political parties, was enjoined from the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code.

Appellants' Notice of Appeal to this Court was filed in the United States District Court, Northern District of Texas, Dallas Division, on the 19th day of February, 1971, within the time prescribed by 28 U.S.C. §2101(b). Such Notice of Appeal is attached hereto as Appendix "D".

The jurisdiction of this Court to review the judgment of the court below is conferred by 28 U.S.C. §1253. *Flast v. Cohen*, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d

947 (1968); *Zemel v. Rush*, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965); *United States v. Georgia Pub. Serv. Comm.*, 371 U.S. 285, 83 S.Ct. 397, 9 L.Ed.2d 317 (1963); *Florida Lime & Avocado Growers v. Jacobsen*, 362 U.S. 73, 80 S.Ct. 568, 4 L.Ed.2d 568 (1960).

## QUESTION PRESENTED

Whether Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code are unconstitutional in that they violate the First and Fourteenth Amendments of the Constitution of the United States.

## STATUTES INVOLVED

The Legislature of the State of Texas has heretofore enacted Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code. Such statutory provisions, which were challenged by the Appellees in the court below, are attached hereto as Appendix "C".

## STATEMENT

The Appellees brought this action on behalf of themselves and the class of all other persons similiarly situated requesting that Appellants be enjoined and restrained from enforcing the provisions of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code which require that candidates for party nomination to offices in the general election must pay filing fees as set out in the challenged sections of the Texas Election Code in order to have their names placed on the official ballot in the Democratic primary election. As a basis for such relief, the Appellees alleged

that the requirement for the payment of such filing fees violates the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States and the freedom of assembly clause of the First Amendment of the United States Constitution. Some of the Appellees are candidates for election to certain local and statewide offices, who alleged that they could not afford to pay the filing fee required to have their name placed on the ballot in the Democratic Party primary election. The remaining Appellees are Intervenors who desire to vote for the Appellees who were candidates for public office.

The articles challenged require candidates to pay filing fees as a condition to having their names placed on a ballot in a primary election, and the Appellees have alleged that such filing fees deprive them of their right to run for office in violation of the due process and equal protection clauses of the Fourteenth Amendment because they cannot afford to pay the required fees. Specifically, the Appellees have alleged that the filing fee assessments are unreasonably high and without any reasonable relation to any legitimate legislative purpose.

The court below, in its opinion and judgment, has declared the challenged provisions of the Texas Election Code unconstitutional and has enjoined their enforcement by the Appellants. The basis for the conclusion reached by the court below would seem to be two-fold. First, the court below has concluded that the issue is actually one of what effect such filing fees have upon the voter and therefore have based their decision on the rights of the voter rather than upon the rights of candidates for public office. Secondly, while the court below has recognized that primary filing fees constitute

a permissible and legitimate interest of the State, and even under some instances may constitute a compelling interest, the court concluded that in the present case there was not a compelling State interest.

The contentions of the Appellants that the Appellees were attempting to have the court below extend certain voting right principles into the new area of candidates filing for office in primary elections; that the Appellees were attempting to have the court below follow guidelines or standards in passing upon the challenged statutes, which were more demanding than those required by prior decisions of this Court; and that there existed constitutionally sufficient reasons or even compelling reasons for the enactment of the challenged provisions of the Texas Election Code, were all cast aside by the court below.

## THE QUESTIONS ARE SUBSTANTIAL

While the ultimate question for decision by this Court deals with the issue of whether Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code violate the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution and the First Amendment of the Constitution of the United States insofar as such provisions require a filing fee for a candidate's name to be placed on the ballot in a primary election, the Court is presented with several issues in arriving at its conclusion.

### I. Should Voting Right Principles be Extended Into the Area of Filing Fees for Candidates In the Primary Elections of Political Parties.

While the instant proceeeding commenced as a challenge against certain statutes of the State of Texas

requiring candidates to pay a filing fee as a condition to having their names placed on a ballot in a primary election, the whole thrust of the case was altered by the statement made by the court below in its opinion which stated that:

> "Since the rights of the Intervenors as voters will be determinative of the constitutionality of the laws here attacked, we deem it unnecessary to discuss the rights of the candidates."

The court below then proceeded to treat the instant case as one dealing primarily as one involving an alleged restriction or burden upon the right of the voter to vote. The court below then proceeded to cite such cases as *Yick Wo v. Hopkins*, 118 U.S. 356, 30 L.Ed. 220 (1886); *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). The court below then applied the principles of these cases to hold unconstitutional the challenged provisions of the Texas Election Code requiring candidates to pay filing fees as a condition to having their names placed on a ballot in a primary election. Consequently, the court has in effect extended certain principles laid down in voting right cases into a completely new and novel area for implementation.

The stringent requirements laid down by this Court in connection with cases dealing with circumstances where a voter had been denied the right to exercise this franchise would now be applied by the court below in passing upon the requirements which may be placed upon a candidate for public office as a condition to

having his name placed on the ballot in a primary election.

The Appellants submit that the court below was in error in making such an extension of these voting right principles to this new area, and in addition has ignored certain long established principles.

Examination of the various state voting systems reveals that there is no semblance of uniformity in the methods used in the various states for qualifying to get on the primary ballot. Just as the Fourteenth Amendment does not require uniformity among the states in the method adopted for the selection of electors for President and Vice-President, *McPherson v. Blacker*, 146 U.S. 1, 13 S.Ct. 3, 36 L.Ed. 869 (1892), neither does it require uniformity in the laws of the various states concerning procedures for being placed on primary ballots. Yet Appellees and the court below looked at the laws of other states in order to judge the validity of the Texas registration laws. They should not be judged by the measure of what other states (none of which are uniform) may choose to enact, but by what is permissible under the United States Constitution.

The Appellees have not shown that the filing fee statutes of this State, either upon their face or as administered, discriminate against any particular group or class of persons in Texas. Certainly there has been no denial of the right to vote.

The main thrust of the Appellees' argument is that the filing fee and assessment as provided by Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code are excessive and that such fees and assessments are discriminatory and in direct conflict with the equal protection clause of the Fourteenth amend-

ment of the United States Constitution. This question has long been laid to rest with respect to the constitutional right of a candidate to run for public office. In *Snowden v. Hughes*, 321 U.S. 1, 88 L.Ed. 497, this Court held that the right to become a candidate for state office is a right or privilege of state citizenship, not of national citizenship, which alone is protected by the privileges and immunities clause of the Fourteenth Amendment. This Court made the following observations, at page 502:

> "The protection extended to citizens of the United States by the privileges and immunities clause includes those rights and privileges which, under the laws and Constitution of the United States, are incident to citizenship of the United States, but does not include rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law. Slaughter-House Cases, 16 Wall. (US) 36, 74 79, 21 L ed 394, 408, 409; Maxwell v. Bugbee, 250 US 525, 538, 63 L ed 1124, 1130, 40 S Ct 2; Prudential Ins. Co. v. Check, 259 US 530, 539, 66 L ed 1044, 1052, 42 S Ct 516, 27 ALR 27; Madden v. Kentucky, 309 US 83, 90-93, 84 L ed 590, 594-596, 60 S Ct 406, 125 ALR 1383. The right to become a candidate for state office, like the right to vote for the election of state officers, Minor v. Happersett, 21 Wall. (US) 162, 170-178, 22 L ed 627, 629-631; Pope v. Williams, 193 US 621, 632, 48 L ed 817, 822, 24 S Ct 573; Breedlove v. Suttles, 302 US 277, 283, 82 L ed 252, 256, 58 S Ct 205, is a right or privilege of state citizenship, not of national citizenship which alone is protected by the privileges and immunities clause."

The Appellees and the court below attempt to distinguish this case by stating that the complaint does not go to the privileges and immunities clause of the

Fourteenth Amendment, but rather goes to the equal protection clause and therefore *Snowden v. Hughes* is readily distinguishable. A careful reading of *Snowden v. Hughes*, however, clearly shows that this Court also dealt with the equal protection clause with respect to the constitutional right of a candidate to run for public office in one of the states of the union. In dealing with the equal protection clause, the Court goes on in *Snowden, supra*, to state the following:

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. Taylor & Marshall v. Beckham, 178 US 548, 44 L ed 1187, 20 S Ct 890, 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion. Cave v. Missouri, 246 US 650, 62 L ed 921, 38 S Ct 334, as we reaffirm it now."

The ruling in *Snowden, supra*, has been followed as late as 1967 in *Bynum v. Burns*, 379 F.2d 229 (Eighth Circuit, 1967) where the Court in dealing with an election case held that a Negro who was not certified as a candidate for Justice of the Peace because he had paid a one dollar statutory filing fee to the city treasurer instead of to the county treasurer, failed to establish jurisdiction allowing federal courts to require his certification in absence of a showing of discriminatory activity by state officials. In the *Bynum* case the Court, speaking through Judge Gibson, reaffirmed the holding in *Snowden, supra*, by the following observations, at page 231:

> "We note at the onset that this is an election matter pertaining solely to state office and would not ordinarily be covered by the Equal Protection

Clause, Due Process Clause or Privileges and Immunities Clause of §1, Fourteenth Amendment of the United States Constitution, unless the Court could, as alleged, find that Bynum was deprived of his right to run for local office because of his race. Admittedly Bynum did not follow the state procedure specified for qualifying as an independent candidate for the Justice of the Peace, position #3; nor did the Election Commissioners have any authority to waive any of the statutory requirements. All people of the state have an interest in the proper procedures being observed by state and local officials. There is nothing in the record to indicate that Bynum was treated differently than any other citizen would have been treated under the same or similar circumstances. There is no showing that other candidates who paid their statutory filing fee in the wrong place had their names placed on the ballot. The record discloses that the attorneys themselves were uncertain at the time of trial as to just where the $1 fee should be paid and it is certainly reasonable to hold with the District Court that persons seeking to qualify for office should abide by the statutory requirements, secure their own counsel in case of doubt, and not place the entire burden on elective officials who serve in part time capacities to clearly delineate legal requirements. Therefore, absent a showing of discriminatory activity by state officials, appellant has not established jurisdiction allowing the federal courts to act."

With respect to the Appellees' rights pertaining to state citizenship and as derived solely from their relationship with the State of Texas as established by state law, the Appellants submit that the Texas Legislature is empowered by the Constitution of the State of Texas to pass laws regulating elections under the provisions of Article VI, Section 4:

"In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters. As amended Nov. 8, 1966, effective Nov. 3, 1967."

In *Bodner v. Gray*, 129 So.2d 419 (1961), the issue raised by the Plaintiffs was considered by the Supreme Court of the State of Florida. In dealing with a question of the constitutionality of the requirement of the paying of a filing fee by a candidate for public office, the Florida Supreme Court made the following observations, at page 420:

"While there are authorities holding to the contrary, the great weight of authority supports the view that reasonable fees may be exacted from candidates for public office.

"This Court, although it has not directly passed upon this particular proposition, has consistently followed the majority view in related questions."

The case of *Bodner v. Gray, supra*, states that the great weight of authority supports the view that reasonable fees may be exacted from candidates for public office. Such cases as *Socialist Party v. Uhl*, 103 P. 181 (Calif. 1909); *Ritter v. Douglass*, 109 P. 444 (Nevada 1910); *State ex rel Riggle v. Brodigan*, 143 P. 238 (Nevada 1914); *State v. Nichols*, 50 Wash. 508, 97 P. 728; *Patton v. Withycombe*, 159 P. 78 (Ore. 1916); *Gray v. Kenny*, 153 P.2d 961 (Calif. 1945); *Kenneweg v. Allegany County Com'rs.*, 62 Atl. 249 (Md. 1905) certainly substantiate the long recognized rule by many of our states' highest courts that filing fees are both a

necessary and legitimate requirement of a candidate obtaining the placement of his name upon the ballot. These cases also demonstrate the many desirable, if not necessary, reasons for the requirement of such a filing fee. While the Appellants are aware that such precedent is neither controlling or binding upon this Court or the court below, the Appellants do submit that such long standing and well reasoned precedent should not be taken lightly or ignored.

The court below commented upon the recent decision in the case of *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), as supporting the conclusion reached as to the challenged provisions of the Texas Election Code. However, the Appellants submit that *Williams v. Rhodes, supra*, would hardly seem controlling in the instant case as it dealt with an attempt by a political party to be included on the ballot in the general election rather than a particular candidate paying filing fees to enter the primary. Also, *Williams v. Rhodes, supra*, recognized that the state could have a compelling interest in regulating the ballot. This Court stated in *Williams v. Rhodes, supra*, that:

> "And, as we have said, the state is left with broad powers to regulate voting, which may include laws relating to the qualification and functions of electors. But here the totality of the Ohio restrictive laws taken as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination in violation of the Equal Protection Clause.
>
> ". . .
>
> "Finally Ohio claims that its highly restrictive provisions are justified because without them a large number of parties might qualify for the ballot, and the voters would then be confronted with

a choice so confusing that the popular will could be frustrated. But the experience of many States, including that of Ohio prior to 1948, demonstrates that no more than a handful of parties attempts to qualify for ballot positions even when a very low number of signatures, such as 1% of the electorate, is required. *It is true that the existence of multitudinous fragmentary groups might justify some regulatory control* but in Ohio at the present time the danger seems to us no more than 'theoretically imaginable'." (Emphasis added.)

In *Williams v. Rhodes, supra,* the court recognized that the restrictions placed upon political parties being included in the general election ballot were almost impossible other than for the Democratic and Republican parties, and this would seem to be the main reason for the court's decision. The Appellants submit, however, that in the instant case there is no such restriction that has the actual effect of limiting the candidates in a primary election to only certain favored candidates.

The Appellants further submit that the recent cases of *Jenness v. Little,* 306 F.Supp. 925 (1969); *Wetherington v. Adams,* 309 F.Supp. 318 (1970); *Fowler v. Adams;* 315 F.Supp.——, 27 L.Ed.2d 23, clearly disclose the confusion which arises when the courts attempt to apply the principles laid down in the voter rights cases to filing fees assessed candidates for public office in party primary elections.

No two states in this United States have elected to control and regulate the conduct of elections and the functioning of political parties within the election process in the same manner. The legislatures of the various states have through many years of trial and error devised various systems which meet the needs and desires of the citizens of each particular state. For the courts

to now attempt to substitute their discretion and judgment for that of the many legislative bodies would seem indeed improper. As this Court said in *Communist Party v. Control Board*, 367 U.S. 1 (1961):

> "It is not for the courts to re-examine the validity of legislative findings and reject them."

The very nature of the judicial process makes it an inappropriate forum for the determination of the complex factual questions of the kind involved in the instant proceeding, and the Appellants submit that the courts should refrain from striking down legislative enactments in this area merely because the court feels that another method of handling the issue would have been preferable.

As this Court stated in *Griswold v. Connecticut*, 381 U.S. 479 (1965):

> ". . . We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions."

The Appellants submit that the court below has fallen into error in its decision as it has failed to follow the warning of this Court set forth in *Griswold v. Connecticut, supra*. The court below has summarily stricken down numerous statutes of the Texas Election Code merely because they felt that it resulted in filing fees being too high for candidates in primary elections. The court below did recognize the validity of filing fees but left no guidelines to the Legislature as to what type of filing fees would be reasonable or approved by the court. In turn, the court below stripped the State of Texas of its method of financing primary elections with

the mere comment that the court felt that the State of Texas would find other adequate means of raising this needed revenue. In the recent case of *Dandridge v. Williams*, 397 U.S. 471 (1970), this Court set standards and guidelines for the lower courts to follow in determining whether state regulations in the welfare administration field violate the Fourteenth Amendment. Because of the similarity of these cases, both dealing with immensely complex problems, procedures and opinions, it is well to note the statement of this Court that:

> "And it is a standard that is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise, economic or social policy.
>
> ". . . The intractable economic, social, and even philosophical problems presented by the public welfare assistance programs are not the business of this Court.
>
> ". . . The Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients."

While the foregoing comments deal with the area of welfare administration rather than voting rights, the principles involved would seem to be almost identical. The election process, and the working of the various political parties within such process, is an extremely complicated subject, like unto that of welfare administration. In each instance no two states have chosen to use exactly the same approach and actually in the area of welfare administration there should be more

similarity of effort between the states because of the vast amount of federal regulation in this area.

The appellants submit that the guidelines and cautions set forth by this Court in *Dandridge v. Williams*, *supra*, would be applicable with even greater reason in the instant proceeding.

The Appellants submit that the court below was in error in extending the principles of the voting rights case to the area of filing fee assessments upon candidates for public office in party primaries.

II. Has the Court Below Followed the Proper Standards or Guidelines in Passing Upon The Challenged Provisions of the Texas Election Code.

At the outset there must be a determination of the standard by which the validity of the statutes in question are to be judged. The Appellees in the court below contend that the statutes in question may only be sustained if justified by some compelling State interest. However, it was and is the contention of the Appellants that the provisions in question are subject to no more than careful examination and close scrutiny.

An analysis of the opinions of the Supreme Court of the United States dealing with voting rights reveal that it is only where the right to vote is wholly denied to a class of persons that the state must show a compelling necessity for the imposition of the qualification which denies the right to vote. *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965); *Kramer v. Union Free School District*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970).

In each of these cases the qualifications established by the state wholly denied the right to vote to a specified class. However, in those instances where the challenged statute imposes no more than a restriction or impairment upon the right to vote, rather than an absolute denial of such right, the statute is subject to careful and exacting scrutiny. *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966); *McDonald v. Board of Election Commission of Chicago*, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969); *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). In either instance the test to be applied is exacting, with the difference being only in the degree of rationality which the provision must bear to the achievement of the state interest. In the present case, the Appellees have not been denied the right to vote.

While the challenged provisions of the Texas Election Code do not deny the right to vote to the Appellees the court below has applied the standard that Article 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code must be held invalid unless justified by a compelling State or governmental interest, rather than the standard of subjecting the statutory provisions to careful and exacting scrutiny. The Appellants submit that this position by the court below is in conflict with the principles set forth by this Court in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966); *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969); *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed. 2d 675 (1965); *Kramer v. Union Free School District*,

395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969), as neither the Appellees or their class has been denied their right to vote by the challenged provisions of the Texas Election Code.

The court below in its opinion made the following statements concerning the challenged statutory provisions requiring a candidate to pay filing fees as a condition to having his name placed on a ballot in a primary election:

> ". . . The collection of revenue is, of course, a permissible and legitimate interest, but under these circumstances not a compelling state interest. These assessments are not necessary to insure the collection of revenue. Approximately eighteen states do not require candidates to pay any filing fees to support the primary. The State of Texas has been able to find other adequate means of collecting revenue which do not restrict the right to vote. . . .
>
> ". . .
>
> "The Court does not mean to imply that there is no compelling interest, pursuant to which the State may require a primary filing fee. We have limited our decision here to say that a filing fee violates the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get his name on the ballot. Indeed, there may be other compelling interests which would justify some reasonable type of fee. . . ."

The court below in its opinion recognized that the assessment of a filing fee from a candidate in a pri-

mary election was a permissible and legitimate interest of the State, but the court struck the challenged provisions down because they felt that even such permissible and legitimate interests were not under the circumstances compelling State interests. Consequently, the result reached by the court below as to the validity of the challenged statutes would apparently have been different had the court not applied the "compelling State interest" test. In this connection, the recent decision by Judge Celebrezze in *Howe v. Brown*, 319 F.Supp. 862 (1970), offers a most excellent discussion of the "rational relation" test as compared with the "compelling State interest" test.

The Appellants submit that the reasoning in *Howe v. Brown, supra*, is correct, and that the court below has applied the incorrect test in passing upon the validity of the provisions of the Texas Election Code herein involved. The court below should not have used the "compelling State interest" test, and had the court used the "rational relation" test, the validity of the challenged statutes would have been upheld.

## III. Does There Exist a Constitutionally Sufficient Reason or Even a Compelling Reason for the Enactment of the Challenged Provisions of the Texas Election Code.

As stated previously, the court below in its opinion stated that while the articles of the Texas Election Code requiring candidates to pay filing fees as a condition to having their names placed on a ballot in a primary election was a permissible and legitimate interest of the State, it was not under the circumstances a compelling State interest sufficient to uphold the validity of the challenged statutory provisions. The court below

further recognized that there may be other compelling interests which would justify some type of reasonable fee, and admitted that *Williams v. Rhodes, supra*, recognized that the state could have a compelling interest in regulating the ballot. The court did not, however, give much of a hint as to just what these compelling reasons might be to uphold the validity of a filing fee for a candidate in a primary election. Apparently those reasons set forth in the numerous opinions from various states upholding filing fees, as set forth in *Wetherington v. Adams, supra*, did not constitute sufficiently compelling state reasons to uphold the challenged provisions of the Texas Election Code. However, if such is the case, then it becomes increasingly difficult to discover just what would be the compelling state reason necessary to uphold any filing fee.

Like the State of Florida, as is set forth in *Wetherington v. Adams, supra*, the Texas election laws divide the election process into party nomination elections, the primaries, and a general election by nominated candidates for office. This is true of virtually all of the states. For the same reasons as set out by the court in *Wetherington v. Adams, supra*, the Texas Legislature has adopted reasonable rules and regulations providing for the assessment and payment of filing fees required of candidates which are not discriminatory in fact or in application. An even more valid reason for such filing fees is the fact that these fees help support the parties and are the only method provided for defraying the expenses of holding the party primaries and can only be used to pay for the necessary expenses of the first and second party primaries, and any moneys not required for those expenses are refunded to those candidates paying the filing fees. By providing that each

county executive committee make their estimate of expenses and levy their assessment accordingly, the Legislature has attempted to place at the grass roots of the election process a method that will be fair to the members of the party of each county which is a political subdivision closest to the people and the basic political subdivision most of the officers elected will serve. However, the court below felt that the purpose of defraying the costs of conducting the primary elections was not a sufficiently compelling State interest when compared to the burden it placed on the voters and their candidates.

The Appellants submit that the reasoning of the court below was erroneous for several reasons. First, if the assessment of a filing fee sufficient to cover the costs of the primary election is not sufficiently compelling State interest to justify such a filing fee, then how could the court below justify any form of filing fee which did not have for its purpose as meritorious a reason as financing the election process. Secondly, the court below feels that the requirement of a filing fee places an undue burden on the voters. The Appellants submit that to do away with the candidate's having to pay these filing fees, which pay for the primary elections, will actually place another burden upon the voter which is not presently there. If the costs of conducting the primary elections are removed from those candidates who are seeking political offices and which do so under the banners of a particular political party, then the alternative which the court below has forced upon the State of Texas is that they must be assumed by State and local governmental bodies. Today these governmental bodies are being increasingly faced with the almost unsurmountable problems of the rising de-

mands for the use of the tax dollar. The court below in its decision has added yet another burden to the staggering costs of State and local government—the costs of financing the primary elections of all political parties. Needless to say, the taxpayer will ultimately have this additional cost added to his already increasingly staggering burden. The court below has apparently treated the taxpayer and the voter as two separate and distinct bodies. This, however, is to create a fantasy, because each and every voter is also either directly or indirectly a taxpayer. Actually the decision of the court below has merely transferred the costs of primary elections from the candidates to the voters. The court below has based its decision essentially on the assumption that the present filing fee system in Texas as to primary elections places an undue burden on the voter. The Appellants submit that the decision of the court below, in now placing the costs of the primary elections upon the voter, places a far heavier burden on the voter than existed prior to the court's decision. In addition, the court's decision has virtually insured a large list of candidates in every primary election with additional run-off elections then becoming virtually certain with increased election costs. The court below has not lessened the burden upon the voter by its decision—it has merely increased the voter's already staggering tax burden. Perhaps it might be well at this time for this Court to also consider the rights of the taxpayers of this country as well as their duties to support the costs of our government.

The opinion of the court below gives some significance to the fact that in Texas in a primary election, there is not an alternative "write-in" provision which would allow a write-in candidate in a primary election.

While this is in fact true, the Appellants submit that it is somewhat misleading. There are several provisions of the Texas Election Code which provide means of voters to associate together to place their chosen candidate on the ballot. Article 13.54 of the Texas Election Code sets out provisions for nominating candidates for county and precinct offices by a party without a State organization by holding a county convention. Also Article 13.47 and Article 13.47a provide for political parties not required by law to hold primaries to make nominations by conventions. Article 13.50 sets out the procedure for a non-partisan or independent candidate to get his name printed on the general election ballot in the column for independent candidates. The Texas Election Code has also made provisions for write-in candidates in the general election as set out in Articles 6.05, Subdivisions 3 and 5, 6.05b, 6.06a, 7.14, Sections 16 and 16a, 7.15, Subdivision 11, Paragraph (c) (8), Subdivision 19, Paragraphs (a) and (c), Subdivision 20, Paragraph (k).

A full study of the Texas Election Code will clearly reveal that the Texas Legislature has provided in the Election Code for many different ways for a person to have his name placed on the general election ballot, and the party primary provisions calling for the payment of filing fees apply to all candidates who seek that method of having their name placed as a candidate on a general election ballot.

The Appellants submit that there does exist constitutionally sufficient reasons, even compelling reasons, for the enactment of the challenged provisions of the Texas Election Code by the State of Texas. Determining just what constitutes a sufficiently compelling State interest in a matter as complicated as the election

process is at best an extremely difficult decision. The courts have in this case been presented numerous reasons which are certainly permissible or legitimate grounds. To summarily hold that they are not quite "compelling" enough is to ignore the long standing precedent and efforts which have gone into forming the election process of this country. The chaos which can result in the election process in this State by invalidating the method of financing primary elections seems somewhat unjustified when based upon grounds as difficult to determine as to what constitutes "compelling State interest".

## CONCLUSION

It is submitted that the questions presented by this appeal are substantial and of public importance to the voters, candidates for political office, and those individuals charged with the responsibility of conducting elections in the State of Texas and those states throughout the United States with similar statutory provisions, warranting plenary consideration by this Court.

Respectfully submitted,

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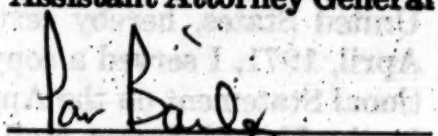

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## CERTIFICATE OF SERVICE

I, Pat Bailey, one of the attorneys for the Appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14 day of April, 1971, I served a copy of the foregoing Jurisdictional Statement on the Appellees by depositing a copy in the United States mail, postage prepaid, and addressed to the attorneys of record for Appellees as follows: Mr. H. Averill Sweitzer, 5th Floor, Manor House, Dallas, Texas 75202; Mr. A. L. Crouch, 109 Taylor, Fort Worth, Texas 76102; Mr. John L. Fashing, 608 Southwest National Bank Building, El Paso, Texas 79901; Mr. Fred Weldon and Mr. Stuart R. Abelson, 119 N. Stanton Street, Room 215, El Paso, Texas 79901.

Pat Bailey

PAT BAILEY

# APPENDIX

## APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER
versus
MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED
versus
ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED
versus
GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS
AND INDIVIDUALLY AND THE COUNTY DEM-

OCRATIC EXECUTIVE COMMITTEE OF EL PASO COUNTY, TEXAS AND THE PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES and MANUEL SAPIEN, on behalf of themselves and all others similarly situated, and as members of U.N.I.O.N., Incorporated,

INTERVENORS

## ORDER

For the reason stated in the Opinions filed in the above styled cases, it is ORDERED, ADJUDGED and DECREED that Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are hereby declared to be unconstitutional because they infringe upon First Amendment rights without any compelling justification in violation of the First and Fourteenth Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967).

SIGNED and ENTERED this 21st day of December, 1970.

HOMER THORNBERRY, Circuit Judge

SARAH T. HUGHES, District Judge

W. M. TAYLOR, JR., District Judge

## APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER
versus
MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED
versus
ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED
versus
GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS
AND INDIVIDUALLY AND THE COUNTY DEM-

OCRATIC EXECUTIVE COMMITTEE OF EL PASO COUNTY, TEXAS AND THE PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES and MANUEL SAPIEN, on behalf of themselves and all others similarly situated, and as members of U.N.I.O.N., Incorporated,
INTERVENORS

Before THORNBERRY, Circuit Judge, and HUGHES and TAYLOR, District Judges

TAYLOR, District Judge

In the above cases, the plaintiffs seek an injunction to restrain the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967)[1] and to have them declared unconstitutional.

Art. 13.08 authorizes the county committee to make an assessment of the costs of running the primary and to apportion the cost in such a manner as in their judgment is just and equitable among the various candidates except for certain offices such as state senator and representative. "In making the assessment upon any candidate, the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made."

Art. 13.08a provides for a maximum allowable assessments that can be made by the committees in counties according to the population.

Arts. 13.15 and 13.16 regulate the filing fees for certain statewide offices.

These articles require candidates to pay filing fees

[1]Art. 13.07a provides that a candidate for a state office must pay a deposit of $50.00 to the county chairman at the time he applies for a place on the ballot.

as a condition to having their names placed on a ballot in a primary election.

The parties have stipulated that Plaintiff William Pate meets all qualifications to be a candidate in the Democratic Primary Elections for the office of County Commissioner of Precinct Four for El Paso County, Texas, except that he cannot pay the $50.00 deposit nor the $1424.00 assessment. Likewise, Plaintiff Theodore Wischkaemper meets all of the qualifications for County Judge of Tarrant County, Texas, except that he has not paid the $6,300.00 assessment fee.

Plaintiff Carter's application to be placed on the ballott for the office of Commissioner of the General Land Office was denied by the State Democratic Executive Committee because it was not notarized,[2] it was not accompanied by a filing fee,[3] and it was not accompanied by a notarized loyalty affidavit.[4]

In addition to the plaintiffs, Reuben Jenkins has been allowed to intervene as a voter who wished to vote for plaintiff Wischkaemper and Carlos Guzman, et al. have asked to be allowed to intervene as voters who desired to vote for Plaintiff Pate. The latter will be allowed to intervene. Fed. R. Civ. P. 24 (a) (2).

Plaintiffs claim that the filing fees deprive them of their right to run for office in violation of the due process and equal protection clauses of the Fourteenth Amendment because they cannot afford to pay the required fees. Intervenors claim that the filing fees deprive them of their right to vote for a candidate of their own choice in violation of the same sections of the Constitution. Specifically, it is alleged that the

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[2] Tex. Election Code Ann. Art. 13.12 (1967).
[3] Tex. Election Code Ann. Art. 13.08 (1967).
[4] Tex. Election Code Ann. Art. 6.02 (1967).

assessments are (1) exorbitant, arbitrary, capricious, irrelevant, unreasonable, outrageously high, (2) without any reasonable relation to any legitimate legislative purpose and not germane to one's ability to participate intelligently in the electoral process, and (3) discriminatory, in that some offices are assessed higher amounts than others.

A three-judge court was convened on April 3, 1970 in accordance with 28 U.S.C. § 2281 to hear the Plaintiffs' request for a prèliminary injunction. The court allowed the names of Plaintiffs Pate and Wischkaemper to be placed upon the ballot without the payment of any fee. No fee would have to ever be paid if, on final determination of the merits, their claims are accepted by the court; but, should the court reject their claims, they would then be required to pay the challenged fees. Relief was denied as to Plaintiff Carter because he has not complied with filing requirements unrelated to filing fees and assessments. Neither Pate nor Wischkaemper won in their respective primary.

All plaintiffs have stated that they intend to become candidates for state office at the next election period. Even though Plaintiff Carter has failed to meet other requirements in addition to not paying the filing fee, the court need not pass upon his claim because the relief he seeks is the same as that sought by Plaintiffs Pate and Wischkaemper.

It is undisputed that primary elections of political parties are state action and subject to the Fourteenth Amendment. *Smith v. Allwright,* 321 U.S. 649, 88 L. Ed. 987, 64 S.Ct. 757 (1944).

Since the rights of the intervenors as voters will be determinative of the constitutionality of the laws

here attacked, we deem it unnecessary to discuss the rights of the candidates.

The right to vote was defined as a "fundamental political right" in *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 30 L.Ed. 220 (1886). In more recent times the court has said,

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. *Reynolds v. Sims,* 377 U.S. 533, 561-62, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964).

The *Reynolds* court went further in describing the right to vote, saying it included the right to cast one's vote effectively.[*] The effectiveness of the vote there was quantitative in that it was an apportionment case. In *Williams v. Rhodes,* 393 U.S. 23, 30 21 L.Ed.2d 24, 89 S.Ct. 5 (1968), the right to cast one's vote effectively was again discussed. The effectiveness of the vote in that case was qualitative in nature rather than quantitative in that the voters were desirous of voting for a specific candidate who espoused their political beliefs.

The right to choose one's candidate is not only a fundamental political right protected by the Fourteenth Amendment, it encompasses the First Amendment right "to associate for the advancement of political beliefs." *Williams v. Rhodes,* supra.

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[*] "'Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature, modern and viable state government needs, and the constitution demands, no less." 377 U.S. at 565.

Whenever a First Amendment right is encumbered by the state, the burden is on the state to show that such infringement is necessary to support a compelling state interest.* The primary purpose of the filing fee assessments under the Texas statutory scheme is to raise revenue. *Campbell v. Davenport,* 362 F.2d 624, (5th Cir. 1966). This "tax" is used by the party to cover the cost of the primary. All monies collected in excess of the cost of the primary are refunded to the candidate.

In order to qualify as a compelling state interest, the law must be shown to be "necessary and not merely rationally related to the accomplishment of a permissible state policy." *McLaughlin v. Florida,* 379 U.S. 184, 196, 13 L.Ed. 2d 222, 85 S.Ct. 283 (1964). The collection of revenue is, of course, a permissible and legitimate interest but under these circumstances not a compelling state interest. These assessments are not necessary to insure the collection of revenue. Approxi-

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*"The presumption of constitutionality and the approval of 'rational' classifications in other types of enactments are based on an assumption that the the institutions of state government are structured so as to fairly represent all people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality." *Kramer v. Union School District,* 395 U.S. 621, 628 (1969).

"[T]he right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. In determining whether the state has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that 'only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting First Amendment freedoms.

"The state has here failed to show any 'compelling interest' which justifies imposing such heavy burdens on the right to vote and to associate." *Williams v. Rhodes,* 393 U.S., at 31. See "The Supreme Court, 1968 Term," 83 Harv. L. Rev. 60, 93, n. 30 (1969).

mately eighteen states do not require candidates to pay any filing fees to support the primary.[7] The State of Texas has been able to find other adequate means of collecting revenue which do not restrict the right to vote.[8] *United States v. State of Texas,* 252 F.Supp. 234, 252 (W.D.Tex. 1966).

By requiring this "tax" in the form of primary filing fees, the State of Texas has in effect imposed a wealth requirement directly upon the candidate and the voters they seek to represent. A standard of wealth has never been considered as relevant to one's intelligent participation in the electoral process. As the Supreme Court said in *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 668, 16 L.Ed. 2d 169, 86 S. Ct. 1079 (1966).

> We conclude that a state violates the Equal Protection clause of the Fourteenth Amendment whenever it makes the affluence of the voter or the payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying this or any other tax. . . .
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> * * * *
>
> But we must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed,

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[7] Colorado, Indiana, Iowa, Illinois, Kansas, Kentucky, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee and Vermont.

[8] The Secretary of State has already presented to the House Interim Committee on Elections proposed election law changes. It recognizes the exorbitant filing fees assessed in some counties and the unworkability of the present system in the future. It recommends that the primary expenses be borne not only by the candidate, but also by the county and state. *Office of the Secretary of State, Proposed Election Law Changes, A report to the 62nd Legislature of the State of Texas,* December 10, 1970.

or color, is not germane to one's ability to participate intelligently in the electoral process.

The Court does not mean to imply that there is no compelling interest, pursuant to which the State may require a primary filing fee. We have limited our decision here to say that a filing fee violates the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get his name on the ballot. Indeed, there may be other compelling interests which would justify some type of reasonable fee. The *Williams* court recognized that the State could have a compelling interest in regulating the ballot.[9]

In determining whether the State's interest in exacting a filing fee is sufficiently compelling, "we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes,* supra, p. 30. Here the high fee charged, in the thousands of dollars, for revenue purposes is not sufficient state interest when compared to the burden it places on the voters and their candidates. A "write-in" alternative would not bring about the needed balance on the "individual-state interest" scale and make these fees any more

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[9] *Wetherington v. Adams,* 309 F.Supp. 318 (N.D.Fla., 1970) recognized this interest as a justification for a primary filing fee.

*Jenness v. Little,* 306 F.Supp. 925 (N.D.Ga., 1969) *appeal dismissed* 397 U.S. 94 (1970), also recognized this as a legitimate and possibly compelling state interest. However, the court there said that it could not be an absolute qualification. If used for this purpose, there should be some alternative provided. A pauper's affidavit and a supporting nominating petition could protect this interest and serve as an alternative to a filing fee.

palatable. *Williams v. Rhodes, supra,* and *Jenness v. Little, supra.*

The Court is aware of the fact that in *Wetherington v. Adams, supra,* filing fees for a primary election were upheld as constitutional. The plaintiff in that case was a candidate and the issues were decided on the basis of what were his rights vis-a-vis those of the state. While neither approving nor disapproving of the reasoning used or the results reached, we need only say that in the case at bar we have resolved the issues on the rights of the voters. The cases are, therefore, distinguishable.

In granting declaratory relief, we hold that the statutes are unconstitutional because they infringe upon the exercise of voting and associational rights without any compelling justification in violation of the First and Fourteenth Amendments. The State of Texas, through its political parties, will be enjoined from the enforcement of the Texas Election Code sections requiring filing fees and assessments of a candidate in order that his or her name be placed upon a primary ballot.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER

versus

MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED

versus

ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED

versus

GEORGE A. McALMON, JR., CHAIRMAN OF
THE EL PASO COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL.

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA
L. SIFUENTES and MANUEL SAPIEN,
INTERVENORS

Before THORNBERRY, Circuit Judge, HUGHES, and TAYLOR, District Judges.

THORNBERRY, CONCURRING SPECIALLY:

At issue in the instant case is whether the State of Texas through the imposition of primary filing fees has unduly impinged upon the right of its citizens to associate for the advancement of political beliefs and the right of its qualified voters to vote and to cast their votes effectively. Because I am of the belief that it has, I concur in the result of this judgment.

The standard by which the constitutionality of these controverted election code provisions is to be measured is, as the majority points out, the *Williams* test:[1] Bearing in mind that only a compelling state interest can justify a state's limiting First Amendment freedoms, the Court must consider the facts and circumstances behind the law, the interests that the state claims to be protecting, and the interests of those who are disadvantaged by the classification. Accordingly, I examine, first, the interests of those disadvantaged by the provisions, and, secondly, the interests of the State.

At the very core of this dispute lies the First Amend-

[1]Defendants, relying primarily on *Snowden v. Hughes*, 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497 (1944), contend that this Court should not set aside the election code provisions unless they are grounded in a rationale wholly irrelevant to the achievement of a legitimate state interest, or unless they incorporate an element of intentional or purposeful discrimination. It is true that *Snowden* stated that "an element of intentional or purposeful discrimination" needs to be shown to demonstrate a denial of equal protection. *Snowden*, however, has been modified pro tanto by the language of *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), and by the rationale of *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970), wherein the Supreme Court found a denial of equal protection without an "invidious or purposeful discrimination."

ment's guarantee of the right to engage in association for the advancement of beliefs and ideas[5] and the "fundamental political right" that constitutes the essence of a democratic society and is "preservative of all rights"—the right to vote.[6] In the State of Texas there is simply no way that a person can obtain the Democratic Party nomination other than by paying the filing fee and being elected. The election code includes no provision for nominating petitions at the party level. Moreover, under article 13.09[7] write-in voters may not be counted in primary elections, and no space on the ballot is provided for them. Consequently, voters are deprived of the opportunity to have their candidate considered for the Democratic Party nomination if he cannot post the filing fee.

Since in the overwhelming majority of Texas political offices nomination by the Democratic Party is tantamount to election, it is clear that restriction on entry into the primary may signficantly impair the right to cast one's vote effectively. In addition, the right of association is abridged significantly in that a person unable to pay the filing fee must, with the aid of those desirous of supporting him, form a new party or run as an independent: They are precluded by the high filing fee from associating within the established party. Undeniably, then, the State's high primary filing fees impose significant burdens on the right to vote and to

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[5] The Supreme Court has repeatedly held that freedom of association is protected by the First Amendment. *See, e.g., Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *United Mine Workers of America, Dist. 12 v. Illinois State Bar Assn.*, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1966); *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

[6] *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1064, 1071, 30 L.Ed. 220 (1886).

[7] Tex. Election Code Ann. Art. 13.09 (1967).

associate. The question determinative of this controversy is whether there lies behind the high fees a State interest sufficiently compelling to justify the burdens.

Three State policies allegedly are furthered by this fee system. First, the State contends that the fees serve to limit candidacy to "serious" candidates. To discriminate against voters or candidates on the basis of the depth of their pocketbooks, however, is to wade into unconstitutional waters. *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966); *Cipriano v. City of Houma,* 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969); *Turner v. Fouche,* 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970). It is no answer to proclaim that those candidates without substantial financial backing cannot seriously hope to win. The seriousness and legitimacy of a political effort is not to be measured by the bullion with which it is bulwarked. Though modern politics may dictate that low budgets do not win elections, it cannot be doubted that those with low budgets are entitled to try. *Thomas v. Mims,* — F.Supp. — (S.D. Ala. C.A. No. 5702-69, 1970). Clearly, this first alleged justification is without sufficient merit to warrant the imposition of these burdens.

Secondly, Texas seeks to ground these high fees in the State interest of regulating the ballot to prevent confusion of voters. Although courts have indeed approved the objective of regulating the ballot,[8] the approval has been bestowed within the context of nominal or reasonable fees.[9] Defendants have pointed to

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[8] *See, e.g., Williams v. Rhodes,* 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Wetherington v. Adams,* 309 F.Supp. 318 (N.D.Fla. 1970); *Jenness v. Little,* 306 F.Supp. 925 (N.D.Ga. 1969), appeal dismissed 397 U.S. 94 (1970).

[9] *See, e.g., Bynum v. Burns,* 8th Cir. 1967, 379 F.2d 229;

no instance in which fees of the magnitude here challenged—up to $8,900—have received judicial sanction. The fact that virtually all states assess filing fees smaller by a factor of ten or more than those of Texas, and some states none at all, quite strongly indicates that other states have not found the imposition of exorbitant filing fees a *sine qua non* of regulating the ballot.[1] I do not deny that Texas may have a compelling interest in regulating its ballot, but I am of the opinion that the interest can justify, at the very most, only reasonable fees; it cannot impart validity to the amounts here challenged.

Texas also asserts that the filing fee scheme pays for the primary and thus not only avoids draining the State treasury but also allows Parties to remain entities independent of the State. The justification of keeping the Parties private and unsubjected to State interests is, under the circumstances of this case, not a strong one. The Party's role in conducting the primary is, after all, purely ministerial and quite extensively regulated by the State. Nor, in light of the interests at stake, would the burden on the State treasury be onerous if Texas were to assume a substantial portion of the primary expenses. Indeed, as the majority points out, eighteen states require of candidates no filing fee to support the primary. Furthermore, although filing fees have been judicially sanctioned on grounds of contribution, defendants have

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*Kenneweg v. Allegany County Com'rs*, 62 Atl. 249 (Md. 1905); *Socialist Party v. Uhl*, 103 P. 181 (Cal. 1909); *State ex rel. Riggle v. Brodigan*, 143 P. 238 (Nev. 1914); *Bodner v. Gray*, 129 So.2d 419 (Fla. 1966); *State v. Nichols*, 97 P. 728 (Wash. 19—); *Wetherington v. Adams*, 309 F.Supp. 319 (1970).

[1] See Office of the Secretary of State, Proposed Election Law Changes, A Report to the 62nd Legislature of the State of Texas, December 10, 1970 at —.

pointed to no cases other than Texas cases that place the entire burden of primary expense upon the candidates. If Texas has a compelling interest in requiring primary fees for revenue purposes, the interest can justify no more than requiring a candidate to contribute a reasonable portion of the primary expenses attributable to his candidacy. The fees here challenged clearly do not fall within that ambit and must be invalidated.

I do not here undertake the task of determining what constitutes a reasonable fee. I would emphasize, however, that two of our most precious freedoms are at stake, and thus the dimensions of reasonableness within which the State may safely impose a fee are indeed low and narrow.*

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*This is especially true where, as in the instant case, the State has provided no alternative, such as a petition, to the filing fee.

# APPENDIX "C"

**Art. 13.07a Deposit to accompany application for place on ballot**

(1) Every candidate for public office who is subject to assessment by the county executive committee for a portion of the expenses of holding the primary election, except candidates for the Legislature and for the State Board of Education, shall pay to the county chairman, at the time of filing his application for a place on the ballot, a deposit of fifty dollars. In case of district offices in districts containing more than one county or part thereof, the candidate shall pay a deposit of fifty dollars to each county chairman with whom his application is filed. A candidate for the Legislature shall pay to the county chairman, at the time of filing his application, a deposit in the amount of the maximum which he may be assessed in that county, or the amount of the filing fee in that county in cases where a fixed fee is prescribed. A candidate for the State Board of Education shall pay to each county chairman, at the time of filing his application, the quotient obtained upon dividing fifty dollars by the number of counties in the district in which he is a candidate. The fees and deposits accompanying the applications shall become a part of the primary fund.

(2) After the county executive committee makes the assessments provided for in Section 186 of this code,[1] it shall refund to each candidate within thirty days thereafter the amount of the payment in excess of the assessment against the candidate if the deposit exceeds the assessment. If the deposit does not exceed the assessment, the balance due on the assessment shall be paid as provided in Section 186.[1]

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[1]Article 13.08.

Amended by Acts 1967, 60th Leg., p. 1909, ch. 723, § 41, eff. Aug. 28, 1967.

Art. 13.08 Expenses of primary

(1) Prior to the assessment of the candidates, the county committee shall carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks, and all other necessary expenses of holding the general primary and second primary in such county and on the second Monday in February preceding each primary, shall apportion such cost in such manner as in their judgment is just and equitable among the various candidates for nomination for district, county, and precinct offices only as herein defined, except the offices of Justice of the Court of Civil Appeals and member of the State Board of Education, and except the office of state senator and state representative if the assessment or fee payable to the county chairman is fixed at a definite amount, but taking into account the assessments and filing fees received from candidates for the Legislature and the State Board of Education. Where a district office covers more than one county, the assessment of such candidate by the county shall be not more than a sum which is the quotient of the amount which he would be assessed if he represented only one county determined by the formula used to assess county candidates, when divided by the number of counties in his district. In making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made. Within 24 hours after adjournment of the meeting, the chairman shall mail to each person

against whom an assessment is made a notice stating the amount of such expenses apportioned to him and informing him that the difference between the amount of the assessment and the amount of the deposit which accompanied the candidate's application must be paid to the chairman on or before the fourth Monday in February; and no person's name shall be placed on the ballot unless he pays the assessment within the prescribed time. The notices shall be sent to the candidates by registered or certified mail, and the chairman shall obtain a receipt for each letter, postmarked by the post office at which the letter is mailed, as evidence of the mailing, and shall preserve the receipts for a period of three months.

(2) A candidate filing after the date of the aforesaid meeting shall not be required to accompany his application with the deposit provided for in Section 185a of this code,[1] but shall pay the full amount assessed against him by the county executive committee within one week from the date on which his application is filed; provided, however, that where a fixed filing fee is required for an office included in this section, the amount of the fee must accompany the application.

(3) It shall be sufficient to meet the requirements of this law to mail by registered or certified letter to the chairman before the deadline herein provided, as shown by the postmark on the letter, a money order, a certified check, or a cashier's check; but it shall not be sufficient to make the payment by any other type of mail unless it is delivered before the deadline.

(4) A candidate for the State Board of Education shall pay a filing fee of fifty dollars, which shall be prorated equally among the counties comprising the

[1] Article 13.07a.

district in which he is a candidate, and the prorated amount shall be paid to each county chairman at the time the candidate files his application for a place on the ballot.

Amended by Acts 1967, 60th Leg., p. 1910, ch. 723, § 42, eff. Aug. 28, 1967.

Art. 1308a Assessment of candidates in counties having certain populations

Candidates for any precinct, county or district office and the office of Congress in counties which have a population of one million (1,000,000) or more, according to the last preceding Federal Census, except candidates for the State Legislature and State Board of Education, shall not be assessed a sum in excess of ten percent (10%) of the aggregate annual salary provided for any office of two-year terms, and fifteen percent (15%) of the aggregate annual salary provided for any office of four-year terms, to have their names placed on the ballot in any primary election. Candidates for the State Board of Education shall not be assessed a sum in excess of the amount stated in Section 186 of this Code.[1]

Notwithstanding other provisions of law, the county executive committee in any county which has a population of one million (1,000,000) or more, according to the last preceding Federal Census, may require candidates for State Representative to pay an amount not exceeding Five Hundred Dollars ($500) to have their names placed upon the ballot in a primary election. A candidate for nomination for State Senator shall pay the full amount of One Thousand Dollars ($1,000) as filing fee for office of State Senator to have his name

[1] Article 13.08.

placed upon the ballot in a primary election at the time he files his application for a place on the ballot. The payment must accompany the application and must be in the form of cash, money order, cashier's check or certified check. The application and payment must be delivered to the proper party chairman or secretary by the deadline for making application for a place on the ballot, and it shall not be sufficient for the application and payment to have been mailed before the deadline unless they are actually delivered by the deadline. After the county executive committee makes the assessments as provided in Section 186 of this Code, it shall refund to each candidate within thirty (30) days thereafter the amount of the payment in excess of the assessment against the candidate.

Notwithstanding other provisions of law, the county executive committee in any county which has a population of nine hundred thousand (900,000) to one million (1,000,000), according to the last preceding Federal Census, shall require candidates for State Senator or State Representative to pay the amount of Three Hundred Dollars ($300) to have their names placed upon the ballot in a primary election.

Notwithstanding other provisions of law, the county executive committee in any county which has a population of six hundred fifty thousand (650,000) to nine hundred thousand (900,000), according to the last preceding Federal Census, shall require candidates for State Senator to pay the amount of One Thousand Dollars ($1,000) and candidates for State Representative to pay the amount of Six Hundred Dollars ($600) respectively to have their names placed upon the ballot in a primary election; however, if part of such a county is joined to two (2) or more other counties to comprise a senatorial district, the county executive com-

mittee shall require candidates for State Senator of that senatorial district to pay the amount of Two Hundred Fifty Dollars ($250) to have their names placed upon the ballot in a primary election; and such payment must accompany the application and must be in the form of cash, money order, cashier's check, or certified check and which shall in no event be refunded in whole or in part except in case of the death of the applicant before the primary election. Any person making a refund or participating in making a refund in violation of the provisions of this paragraph is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than ninety (90) days or by a fine of not more than Five Hundred Dollars ($500) or by both.

In any State Representative District consisting of eight (8) and not more than nine (9) counties, the chairmen of the county executive committees shall require candidates for State Representative to pay an amount of Twenty-five Dollars ($25) for each of the counties in said Representative District, to have their names placed upon the ballot in a primary election.

Amended by Acts 1969, 61st Leg., p. 2275, ch. 766, § 1, eff. Sept. 1, 1969.

Art. 13.15. Filing fees for certain offices

Candidates for United States Senator and all those who are candidates for state offices to be voted upon by the qualified voters of the whole state shall pay to the chairman of the state executive committee $1,000. Candidates for Congressman-at-large or for justice of the court of civil appeals shall pay to the chairman of the state executive committee five percent of one year's salary. A candidate who is required to pay a filing fee as herein provided shall not be required to pay any

other sum to any other person or committee to have his name placed on the ballot as such candidate. Payment of the fee herein required must be made at the time the candidate files his application for a place on the ballot, and the name of no person who is required to pay a filing fee in any place or to the chairman of the state executive committee shall be placed on the ballot unless he has paid the fee in accordance with these provisions.

Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 31, eff. Sept. 1, 1969.

Art. 13.16. Payments by candidates for state senator or representative

Subdivision 1. Except as otherwise provided in this code, no candidate for nomination for state senator shall be required to pay to the county executive committee to have his name placed on the primary ballot more than the following amounts:

1. One dollar per county for counties having a population of less than 5,000.

2. Five dollars per county for counties having a population of 5,000 and not more than 10,000.

3. Ten dollars per county for counties having a population of more than 10,000 and less than 40,000.

4. Fifty dollars per county for counties having a population of 40,000 and not more than 125,000.

5. Seventy-five dollars per county for counties having a population of more than 125,000 and not more than 200,000.

6. One hundred dollars per county for counties having a population of more than 200,000.

7. One hundred dollars per county for all senatorial districts composed of no more and no less than two counties, regardless of the population of such counties.

The population in each case is to be determined by the last preceding federal census.

Subdivision 2. Except as otherwise provided in this code, each candidate for nomination for state representative shall pay a filing fee of $150. In districts containing all or part of more than one county, the filing fee shall be prorated among the counties comprising the district on the basis of the percentage of the population of the district residing in each county, as determined by the last preceding federal census. The chairman of the state executive committee of each political party which is holding a primary election shall compute the prorations and shall forward to the chairman of each county executive committee of that party the pertinent information for his county not later than the first day of December preceding the election year.

Subdivision 3. Where some other section of this code provides for an assessment or filing fee at variance with this section, the special provision of the other section shall control.

Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 32, eff. Sept. 1, 1969.

## APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

C.A. 3-3635-C

3-Judge

VAN PHILLIP CARTER

v.

MARTIN DIES, JR. AND
DR. ELMER C. BAUM

C.A. 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER,
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED

v.

ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL.
REUBIN JENKINS, INTERVENOR

C.A. 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED

v.

GEORGE A. McALMON, JR., AS CHAIRMAN
OF THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS,
AND INDIVIDUALLY AND THE COUNTY
DEMOCRATIC EXECUTIVE COMMITTEE

OF EL PASO COUNTY, TEXAS, AND
THE PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES AND MANUEL SAPIEN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, AND AS MEMBERS OF U.N.I.O.N., INCORPORATED, INTERVENORS

## NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

Notice is hereby given that Martin Dies, Jr., Secretary of State of the State of Texas, Dr. Elmer C. Baum, Chairman of the State Democratice Executive Committee, Dr. J. D. Tomme, Jr., Chairman of the Tarrant County Democratic Executive Committee, George A. McAlmon, Jr., Chairman of the County Democratic Executive Committee of El Paso County, Texas, the County Democratic Executive Committee of El Paso County, Texas, and the Primary Committee, the Defendants in the above styled and numbered cause, hereby appeal to the Supreme Court of the United States from the following portion of the judgment entered in this action on the 21st day of December, 1970:

> "For the reasons stated in the Opinions filed in the above styled cases, it is ORDERED, ADJUDGED and DECREED that Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are hereby declared to be unconstitutional because they infringe upon First Amendment rights without any compelling justification in violation of the First and Fourteenth Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement

of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967)."

II.

This appeal is taken pursuant to 28 U.S.C. §1253.

III.

The Clerk will please prepare and certify a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States in accordance with Rule 12 of the Rules of the United States Supreme Court.

IV.

The following question is presented by this appeal: Whether Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16 of the Texas Election Code are unconstitutional in that they violate the First and Fourteenth Amendments of the Constitution of the United States.

Respectfully submitted,

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## PROOF OF SERVICE

I, Pat Bailey, one of the attorneys for the Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of February, 1971, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto as follows: on all of the Plaintiffs and Intervenors herein by mailing copies in duly addressed envelopes with First Class Postage Prepaid to their respective attorneys of record: Mr. H. Averill Sweitzer, Fifth Floor, Manor House, Dallas, Texas 75202; Mr. A. L. Crouch, 109 Taylor, Fort Worth, Texas 76102; Mr. John L. Fashing, 608 Southwest National Bank Building, El Paso, Texas 79901; Mr. Fred Weldon and Mr. Stuart R. Abelson, 119 N. Stanton Street, Room 215, El Paso, Texas 79901.

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No. ~~1006~~

In The

SUPREME COURT OF THE UNITED STATES

70-128

MARTIN DIES, JR. ET AL,

Appellants

vs.

DAN PHILLIP CARTER, ET AL,

Appellees

---

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

---

# MOTION TO AFFIRM

---

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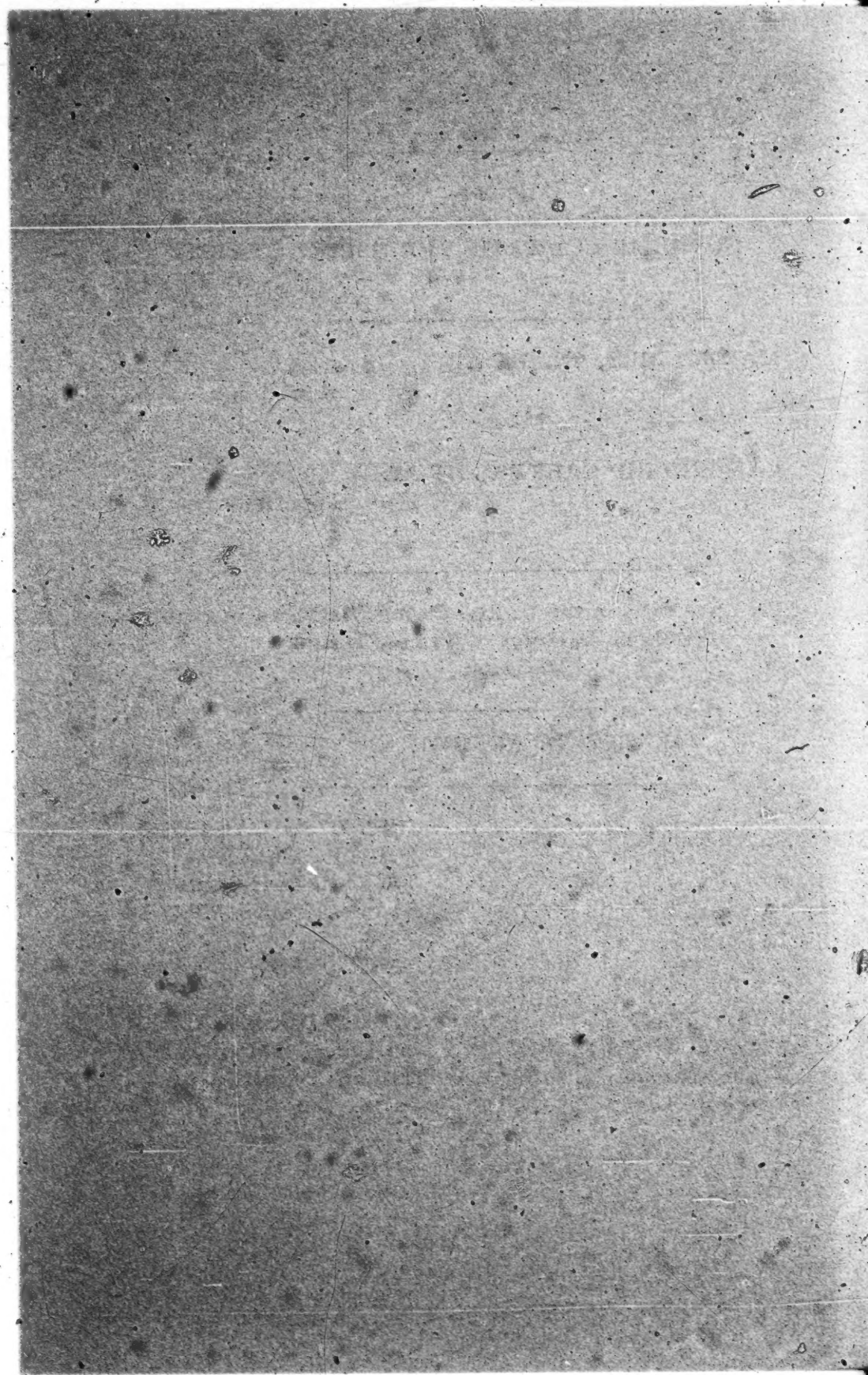

No. 1606

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1970

---

MARTIN DIES, JR., ET AL,

Appellants

versus

DAN PHILLIP CARTER, ET AL

Appellees

---

## MOTION TO AFFIRM

---

Pursuant to Rule 16 of the Rules of The Supreme Court of the United States, Appellees Preston Smith, Governor of the State of Texas, Crawford C. Martin, Attorney General of the State of Texas, and Martin Dies, Jr., Secretary of State of the State of Texas, move that the final judgment and decree of the District Court be affirmed upon the ground that the decision below is so obviously correct as to warrant no further review.

## STATEMENT

This is a direct appeal from the final judgment of the United States District Court for the

Northern District of Texas, Dallas Division, entered on the 21st day of December, 1970, declaring Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code to be unconstitutional and enjoining the State of Texas, through its political parties, from the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code.

## ARGUMENT

This Court has jurisdiction to hear this case; however, the Appellees submit that the decision of the district court that Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16 of the Texas Election Code are unconstitutional is plainly correct.

In a well reasoned opinion the three judge court below considered and disposed of the contentions of Appellants. The result reached is compelled by the decisions of this Court that are cited in the opinion of the three judge court. Certainly the primary purpose of the filing fee assessments upon

candidates in the Texas primary elections is to raise revenue with which to pay the costs of said election. The candidates in Texas primary elections must pay all of the parties expenses in conducting the primary. Judge Thornberry in his concurring separate opinion in the Court below states: "Defendants have pointed to no instance in which fees of the magnitude here challenged — up to $8,900 — have received judicial sanction".

The Texas filing fee system in primary elections is evil and denies the people a fundamental political right to vote and to be candidates in primary elections. The right to seek and hold an elective office is an analogue or corollary to the right to vote and these rights are preservative of all rights and to place a price lable of $8,900 thereon is plainly unconstitutional.

THEREFORE, it is respectfully submitted that the decision below is correct and that said judgment and decree of the district court should be affirmed.

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PROOF OF SERVICE

We, Joseph A. Calamia and John L. Fashing, two of the attorneys for the Appellees herein, and both members of the Bar of the Supreme Court of the United States, hereby certify that on the 12th dav of May, 1971 we served copies of the foregoing Motion to Affirm on the following attorneys of record for the appellants, to wit: Pat Bailey, Assistant Attorney General, P. O. Box 12548 Capitol Station, Austin, Texas 78711, Charles F. Herring 906 Perry Brooks Bldg., Austin, Texas 78701; Estil Vance, Jr. 1800 First National Bank Bldg., Fort Worth, Texas 76102 Mark F. Howell, 508 Southwest National Bank Bldg. El Paso, Texas 79901.

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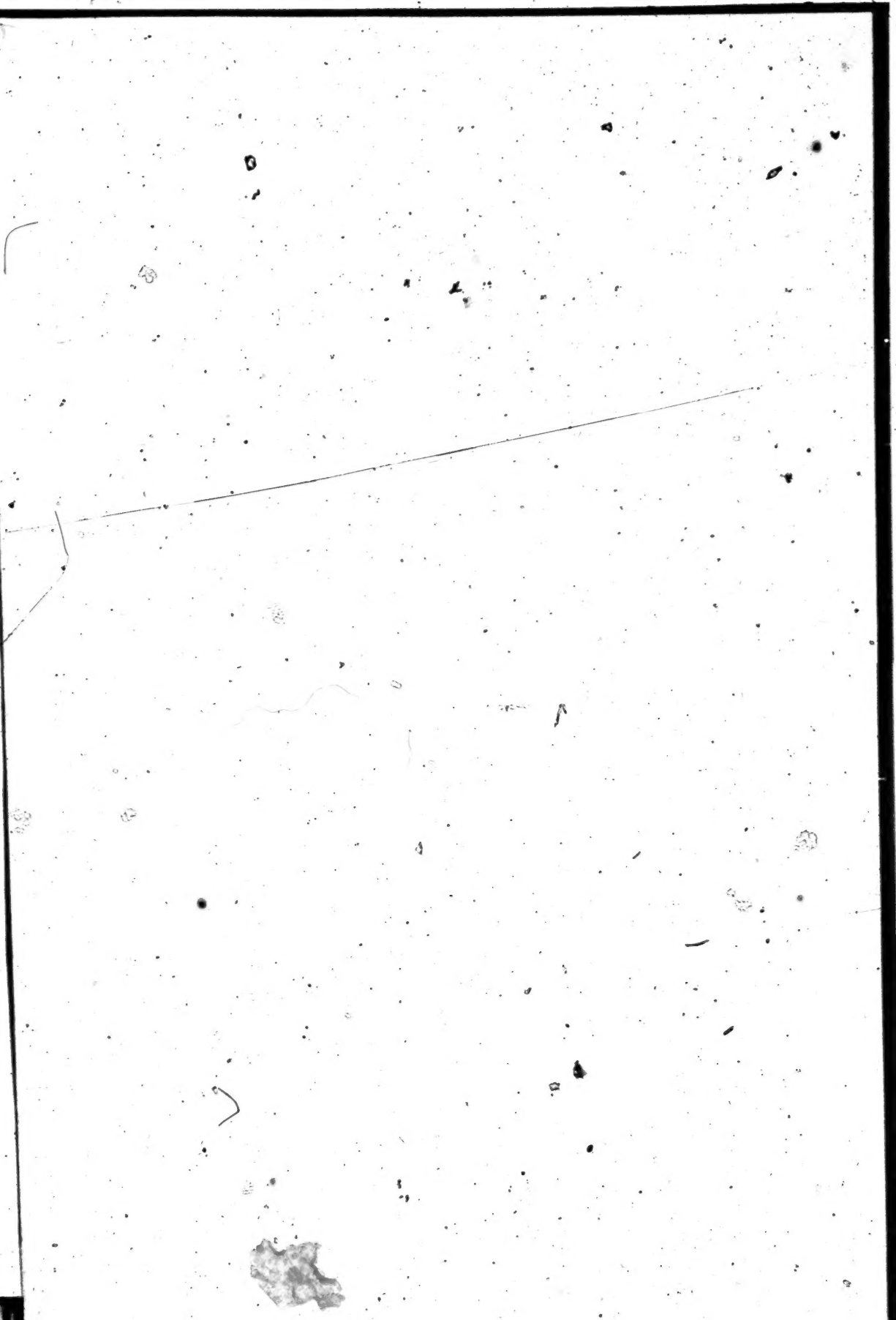

SUPREME COURT, U. S.

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ~~1606~~ 70-128

MARTIN DIES, ET AL., *Appellants*

*v.*

VAN PHILLIP CARTER, ET AL., *Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

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# INDEX


| | Page |
|---|---|
| Statement | 1 |
| Argument | 2 |
| Point I | 2 |
| Point II | 4 |
| Point III | 5 |
| A. The Revenue Tax | 5 |
| B. The License Fee | 11 |
| Conclusion | 21 |
| Certificate of Service | 22 |

## AUTHORITIES

*Cases:* Page

CONSTITUTION OF TEXAS:
Article VI, Section 4 ..... 11, 12

TEXAS ELECTION CODE:
Article 13.07a ..... 5, 7
Article 13.08 ..... 5, 7
Article 13.50 ..... 15
Article 13.53 ..... 15

Baggett v. Bullitt, 1963, 377 U.S. 360 ..... 9
Baird v. Arizona, 1971, 27 L. Ed 2d 639 ..... 5
Beare v. Smith, 1971, 39 L.W. 2388 ..... 8, 12
Boddie v. Connecticut, 1971, 39 L.W. 4294 ..... 10, 17
Bond v. Floyd, 1966, 385 U.S. 116 ..... 13
Brinegar v. United States, 1949, 338 U.S. 160 ..... 19
Briscoe v. Kusper, 1970, 435 F. 2d 1046, 39 L.W. 2386 ..... 7, 14
Burroughs & Knight v. Lyles, 1944, 181 S.W.2d 570 ..... 6

Campbell v. Davenport, 1966, 362 F. 2d 624 ..... 6, 15
Chavis v. Whitcomb, 1969, 305 F. Supp. 1364 ..... 12
Cipriano v. City of Houma, 1969, 395 U.S. 701 ..... 5
City of Phoenix v. Kolodziejski, 1970, 26 L.Ed 2d 523 ..... 5

Dickson v. Strickland, 1924, 265 S.W. 1012 ..... 7

Edwards v. California, 1941, 314 U.S. 160 ..... 10, 14, 20

Fowler v. Adams, 1970, 315 F. Supp. 592, 27 L. Ed. 2d 23 ..... 2
Frost & Frost Trucking Co. v. Railroad Commission of California, 1941, 271 U.S. 583 ..... 10

Garza v. Smith, 1970, 320 F. Supp. 131 ..... 9, 11, 12
Georgia Socialist Workers Party v. Fortson, 1970, 315 F. Supp. 1035 ..... 2, 15
Go-Bart Imp. Co. v. United States, 1930, 282 U.S. 344 ..... 18
Gonzalex v. City of Sinton, 1970, 319 F. Supp. 189 ..... 3
Graham Purcell v. Jim Lindsey, 1958, 314 S.W. 2d 283 ..... 7
Grand T. W. Railway v. South Bend, 1912, 227 U.S. 544 ..... 13
Green v. United States, 1957, 356 U.S. 165 ..... 18
Griffin v. Illinois, 1956, 351 U.S. 12 ..... 10, 17

AUTHORITIES (Continued)

Page

Grosjean v. American Press Co., 1936, 297 U.S. 233 ..... 10, 17
Grovey v. Townsend, 1935, 295 U.S. 45 ..... 8

Hagar v. Reclamation District, 1883, 111 U.S. 701 ..... 6
Hall v. Beals, 1969, 396 U.S. 45, 24 L. Ed. 2d 214 ..... 5, 13
Harman v. Forssenius, 1965, 380 U.S. 528 ..... 10
Harper v. Virginia State Board of Elections, 1966, 383 U.S. 663 ..... 10
Hoeffling v. City of San Antonio, 1892, 20 S.W. 85 ..... 16
Hull v. Petrille, 1971, 39 L.W. 2568 ..... 17

In Re Smith, 1971, 39 L.W. 2487 ..... 17

Jackson v. Ogilvie, 1971, 39 L.W. 2456 ..... 15
Jenness v. Little, 1969, 306 F. Supp. 925 ..... 2, 19

Kilgarlin v. Hill, 1967, 252 F. Supp. 404, 386 U.S. 120 ..... 9
Kingsley International Pictures Corp. v. Regents of the University, 1958, 360 U.S. 684 ..... 9
Kramer v. Union Free School District, 1969, 395 U.S. 621 ..... 5

Lane County v. Oregon, 1868, 74 U.S. 71 ..... 6
Lovell v. City of Griffin, 1937, 303 U.S. 444 ..... 10, 19
Loving v. Virginia, 1967, 388 U.S. 1 ..... 5

Matthews v. Little, 1969, 396 U.S. 1223 ..... 2
Murdock v. Pennsylvania, 1943, 319 U.S. 105 ..... 9, 19

N.A.A.C.P. v. Button, 1963, 371 U.S. 415 ..... 4
Nixon v. Condon, 1932, 286 U.S. 73 ..... 8
Nixon v. Harndon, 1927, 273 U.S. 536 ..... 8

Potts v. Flax, 313 F. 2d 284 ..... 9

Reynolds v. Sims, 1964, 377 U.S. 533 ..... 4

Saltonstall v. Saltonstall, 1927, 276 U.S. 260 ..... 9
Savings & Loan Assn. v. Topeka, 1873, 20 Wall (87 U.S.) 655 ..... 7
Shapiro v. Thompson, 1968, 394 U.S. 618 ..... 10, 16
Smith v. Allwright, 1944, 321 U.S. 649 ..... 8
Snowden v. Hughes, 1943, 321 U.S. 1 ..... 4

AUTHORITIES (Continued)

Page

Socialist Labor Party v. Rhodes, 1970, 318 F. Supp. 1262 ..... 12, 15
Socialist Workers Party v. Rockefeller, 1970, 314 F. Supp. 984, affirmed 91 S.Ct. 65 ..... 4, 15
Stapleton v. Clerk, 1970, 311 F. Supp. 1187 ..... 3, 19
State v. Court of Civil Appeals, 1934, 75 S.W. 2d 253 ..... 7
State Bank v. Knoop, 1853, 16 How (57 U.S.) 369 ..... 8
Staub v. City of Baxley, 1957, 355 U.S. 313 ..... 13
Stensoff v. State, 1891, 15 S.W. 1100 ..... 7

Tate v. Short, 1971, 39 L.W. 4301 ..... 9, 10, 13, 17
Taylor v. Beckham, 1899, 178 U.S. 548 ..... 6
Tenney v. Brandhove 1950, 341 U.S. 367 ..... 8
Terminiello v. Chicago, 1948, 377 U.S. 1 ..... 9
Terry v. Adams, 1953, 345 U.S. 461 ..... 8
Thomas v. Mims, 1970, 317 F. Supp. 179, 39 L.W. 2165 ..... 2, 19
Turner v. Fouche, 1970, 396 U.S. 346, 24 L. Ed. 2d 567 ..... 4

United States v. Classic, 1940, 313 U.S. 299 ..... 2
United States v. Slater, 1881, 6 F. Rep. 824 ..... 10
United States v. Southern Ute Tribe of Indians, 1971, 39 L.W. 4477 ..... 9
United States v. Texas, 1966, 252 F. Supp. 234, 384 U.S. 155 ..... 8, 9, 10, 12, 18

Valenciano v. Bateman, 1971, 39 L.W. 2523 ..... 16
Vaughn v. Bower, 1970, 313 F. Supp. 37, 39 L.W. 3199 ..... 10

Waples, et al. v. Marrast, 1916, 184 S.W. 180 ..... 9, 16
Williams v. Rhodes, 1968, 393 U.S. 23 ..... 2, 12, 13, 14

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No._____

MARTIN DIES, ET AL., *Appellants*

*v.*

VAN PHILLIP CARTER, ET AL., *Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

## Motion To Dismiss or Affirm

The Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the District Court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. See *Carter v. Dies*, 321 F. Supp. 1358.

### STATEMENT

This is a direct appeal from the final judgment entered upon December 21, 1970, by a District Court of three judges convened on April 3, 1970, in accordance with 28 U.S.C. 2281, holding that a filing fee violates the First Amendment and the due process and the equal protection clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get his name on the ballot.

## ARGUMENT

The case presents no substantial question not previously decided by the Court.

### I.

In their first point on appeal, the Appellants maintain that "the court below was in error in making . . . an extension of . . . voting right principles to this new area . . .". *Jurisdictional Statement*, page 8.

But over thirty years ago, in *United States v. Classic*, 1940, 313 U.S. 299, the United States Supreme Court held: "The voter cannot be deprived of his freedom of expressing his will at a general election by a restriction on the candidate by the legislature . . . at a primary . . .".

The supporters of George Wallace, third-party candidate for President in 1968, were successful in getting their candidate's name on the ballot in Ohio only by going to court. "The unreasonable exclusion of a candidate for public office, when other candidates are given places on the ballot," the United States Supreme Court said, "denies the voters who might wish to vote for the excluded candidate the equal protection of the laws." *Williams v. Rhodes*, 1968, 393 U.S. 23.

A qualified voter as well as a candidate applied to enjoin the collection of filing fees in the landmark case of *Jenness v. Little*, 1969, 306 F. Supp. 925, 927, appeal dismissed, 1970, 90 S. Ct. 820. "The right to run," the Court said in that case, "may be an analogue of the right to vote. Moreover, since an adjudication

of the rights of plaintiff Matthews will determine substantially all of the issues in the case in any event, the Court will allow both interventions . . .".

It has been repeatedly held by federal courts that: "To prohibit candidates from getting on the ballot solely because they cannot post a certain amount of money is unconstitutional." *Jenness v. Little, supra; Matthews v. Little*, 1969, 396 U.S. 1223, 24 L. Ed 2d 45; *Fowler v. Adams*, 1970, 315 F. Supp. 592, 27 L. Ed 2d 23; *Georgia Socialist Workers Party v. Fortson*, 1970, 315 F. Supp. 1035; and *Thomas v. Mims*, 1970, 317 F. Supp. 179, 39 L.W. 2165.

In *Stapleton v. Clerk for City of Inkster*, 1970, 311 F. Supp. 1187, the following language appears: "It seems clear to this court that a restriction upon who may be a candidate necessarily affects the efficacy of a person's vote. The effectiveness of the franchise can just as certainly be curtailed by restricting the group from whom candidates may be drawn as by restricting those entitled to cast a vote or by malapportioning a legislative body."

An interesting Texas case is *Gonzalez v. City of Sinton*, 1970, 319 F. Supp. 189, where Judge Seals had this to say: "Equal protection requires that non-property owners right to vote include right to vote for non-property owner." Then the judge added: "(M)any of those same principles which render the voting restrictions constitutionally unacceptable are equally applicable to the issue of candidacy."

A recent case in point is *Turner v. Fouche*, 1970,

396 U.S. 346, 24 L. Ed 2d 567, where the Supreme Court said: "A state may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guaranties."

Another significant case which has been recently decided is *Socialist Workers Party v. Rockefeller*, 1970, 314 F. Supp. 984, 989, affirmed 91 S. Ct. 65, where the Court had this to say: "The power of the State to, in effect, limit the number of candidates placed on the ballot may not be exercised in a way that violates specific provisions of the Constitution. The right to vote freely for the candidate of one's choice, which manifestly encompasses the right of the candidate to a position on the ballot, lies at the essence of democratic society and 'any restrictions on that right strike at the heart of representative government.' *Reynolds v. Sims*, 377 U.S. 533, 555, 1964."

## II.

In their second point, the Appellants, relying upon *Snowden v. Hughes*, 1943, 321 U.S. 1, have taken the position that the court below should have used the "rational relationship" test instead of the "compelling interest" test in evaluating the challenged statutes.

But *Snowden* has no application to First Amendment claims. Mr. Justice Brannon, in *N.A.A.C.P. v. Button*, 1963, 371 U.S. 415, wrote: "The decisions of this court have consistently held that only a compelling state interest within the State's constitutional power

to regulate can justify limiting First Amendment freedoms."

And Mr. Justice Marshall, in *Hall v. Beals*, 1969, 396 U.S. 45, 24 L. Ed 2d 214, 220, took pains to point out that a *per curiam* affirmance of a 1965 case had not committed the Supreme Court to the "rational relationship" test. "(I)f it was not clear in 1965 it is clear now that once a State has determined that a decision is to be made by popular vote, it may exclude persons from the franchise only upon a showing of a compelling interest, and even then when the exclusion is the least restrictive method of achieving the desired purpose."

It would thus appear that *Snowden* is no longer controlling in Fourteenth Amendment cases involving state restrictions on the right to vote. Here, as well as in First Amendment cases, the "compelling interest" test is used. *Kramer v. Union Free School District*, 1969, 395 U.S. 621; *Cipriano v. City of Houma*, 1969, 395 U.S. 701; and *City of Phoenix v. Kolodziejski*, 1970, 26 L. Ed 2d 523.

## III.

In their third and final point, the Appellants have attempted to meet the "very heavy burden of justification," *Loving v. Virginia*, 1967, 388 U.S. 1, and *Baird v. Arizona*, 1971, 27 L. Ed. 2d 639, in connection with a revenue tax ("party assesment," Art. 13.08, *Texas Election Code*) amounting to $6,300.00 and a regulatory license fee ("deposit to accompany application for place on ballot," Art. 13.07a, *Texas*

*Election Code)* of $50.00, both required of candidates for the office of County Judge in the 1970 Tarrant County Democratic Primary Election as a precondition to access to the ballot.

### A. The Revenue Tax

"These filing fees," the Appellants explain on page 21 of their *Jurisdictional Statement*, "help support the parties and are the only method provided for defraying the expenses of holding the party primaries . . .".

It is undisputed that the filing fee, as well as the party assessment, is a tax. *Campbell v. Davenport*, 1966, 5 Cir., 362 F. 2d 624.

The discretion of the State Legislature as to taxation is restrained only by the will of the people expressed in the State Constitution. *Lane County v. Oregon*, 1868, 74 U.S. 71. And to any extent not prohibited by the Constitution of the United States. *Hagar v. Reclamation District*, 1883, 111 U.S. 701. The doctrine of legislative absolutism is foreign to free government as it exists in this country. *Taylor v. Beckham*, 1899, 178 U.S. 548, 609.

The qualifications for the office of County Judge are set forth in the Texas Constitution, Art. 5, Sec. 15, without any reference to the payment of a revenue tax or license fee, which the legislature has attempted to add as a statutory requirement for a constitutional office. But, in the case of *Burroughs & Knight v. Lyles*, 1944, 142 Tex. 704, 181 S.W. 2d 570, the Texas

Supreme Court held: "The State Constitution . . . , having prescribed the qualifications, . . . it is beyond the legislative power to change or add to those qualifications unless such right is expressly granted by the Constitution itself." To the same effect, see: *Stensoff v. State*, 1891, Tex. Sup. Ct., 80 Tex. 428, 15 S.W. 1100 and *Dickson v. Strickland*, 1924, Tex. Sup. Ct., 265 S.W. 1012; *State v. Court of Civil Appeals*, 1934, Tex. Sup. Ct., 123 Tex. 549, 75 S.W. 2d 253. Also, see: *Graham Purcell v. Jim Lindsey*, 1958, Tex. Sup. Ct., 158 Tex. 541, 314 S.W. 2d 283.

Art. 13.08, *Texas Election Code*, authorizing party assessments is unconstitutional on its face, because there is no statutory provision for notice, hearing, or appeal; and the invidious consequences of this *in camera* procedure (See *Briscoe v. Kusper*, 1970, 435 F. 2d 1046, 1971, 39 L.W. 2386) were exacerbated in Tarrant County in 1970 by the usurpation of the judicial function of the designated elected committee of the political party by a "clandestine, illegal committee of intruders," which escalated the filing fees to such an unreasonable extent that only 2 incumbent county officials, out of 25 on the ballot, had opponents, with some assessments reaching $8,900.00 and some rebates exceeding $5,000.00 after all election expenses had been paid!

As Mr. Justice Miller said, in *Savings & Loan Association v. Topeka*, 1873, 20 Wall (87 U.S.) 655, 663: "Of all the powers conferred upon government that of taxation is most liable to abuse . . . . This power can . . . readily be employed against one class of indi-

viduals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

The Supreme Court is well aware of "The sly and stealthy arts to which state Legislatures are exposed, and the greedy appetites of adventurers, for monopolies and immunities from the state right of government." *State Bank v. Knoop*, 1853, 16 How. (57 U.S.), 369, 412.

"Unfortunately it is true," said Mr. Justice Black in *Tenney v. Brandhove*, 1950, 341 U.S. 367, 380, "that legislative assemblies, born to defend the liberty of the people, have at times violated their sacred trusts and become the instruments of oppression."

The State of Texas is notorious for its disregard and even defiance of the Constitution of the United States. A partial catalogue of recent federal decisions discloses: racist primaries financed by party assessments, *Nixon v. Herndon*, 1927, 273 U.S. 536; *Nixon v. Condon*, 1932, 286 U.S. 73; *Grovey v. Townsend*, 1935, 295 U.S. 45; *Smith v. Allwright*, 1944, 321 U.S. 649; *Terry v. Adams*, 1953, 345 U.S. 461 (See opinion of Mr. Justice Black); a poll tax embedded in the State Constitution "to disenfranchise the Negro and the poor white supporters of the Populist Party," *United States v. Texas*, 1966, 252 F. Supp. 234, 245, affirmed 384 U.S. 155; annual registration, "a direct descendant of the poll tax," disenfranchising "over one million Texans," *Beare v. Smith*, 1971, 39 L.W. 2388; malapportionment of the Legislature, *Kilgarlin*

*v. Hill*, 1967, 252 Fed. Supp. 404, 386 U.S. 120; statutory prohibition against assisting voters with bodily infirmities, *Garza v. Smith*, 1970, 320 F. Supp. 131; statutory plebiscite to determine whether a community is going to follow the Constitution of the United States, 1963, *Potts v. Flax*, 313 F. 2d 284; and overreaching taxes and fines, *United States v. Texas*, *supra*, and *Tate v. Short*, 1971, 39 L.W. 4301.

In this case, the State of Texas is leaning on a broken reed. *Isaiah 36:6*. The State's basic defense is *res judicata*, *United States v. Southern Ute Tribe of Indians*, 1971, 39 L.W. 4477, by reason of a judgment entered by the Supreme Court of Texas, in the case of *Waples, et al. v. Marrast*, 1916, 108 Tex. 5, 184 S.W. 180, to which the Democratic State Executive Committee was a party, even as the committee is a party to this lawsuit. The highest court of the State ruled in that case that: "The payment of the expenses of primary elections of political parties is not a public purpose for which public revenues may be used." And that construction of the State Constitution is binding upon both the three-judge court and the Supreme Court. *Saltonstall v. Saltonstall*, 1927, 276 U.S. 260, 270. See also: *Baggett v. Bullitt*, 1963, 377 U.S. 360, 375; *Kingsley International Pictures Corp. v. Regents of the University*, 1958, 360 U.S. 684, 688; and *Terminiello v. Chicago*, 1948, 337 U.S. 1, 5-6.

Moreover, it has long been established that "(a) state may not impose a charge for the enjoyment of a right granted by the federal constitution." *Murdock v. Pennsylvania*, 1943, 319 U.S. 105, 113. See also:

*Grosjean v. American Press Co.*, 1936, 297 U.S. 233; *Lovell v. City of Griffin*, 1937, 303 U.S. 444; *Frost & Frost Trucking Co. v. Railroad Commission of California*, 1925, 271 U.S. 583; *Harman v. Forssenius*, 1965, 380 U.S. 528, 540; *Harper v. Virginia State Board of Elections*, 1966, 383 U.S. 663; *United States v. Texas, supra.*

The burden on the State Treasury does not justify an enactment with an invalid purpose. *Edwards v. California*, 1941, 314 U.S. 160; *Griffin v. Illinois*, 1956, 351 U.S. 12; *Shapiro v. Thompson*, 1968, 394 U.S. 618; and *Vaughn v. Bower*, 1970, 313 F. Supp. 37, affirmed 39 L.W. 3199. Especially where the statute is more effective in producing constitutional problems than revenue, *Tate v. Short, supra*, and alternatives are available, *Tate v. Short, supra; United States v. Texas, supra; Boddie v. Connecticut*, 1971, 39 L.W. 4294.

As the three-judge court said in *United States v. Texas, supra*, p. 253: "The permissible state policy here is not the perpetuation of a head tax as such, but the raising of revenue. When viewed in this perspective, it is clear that the . . . tax as a restriction on the right to vote is not "necessary" to insure the collection of revenue."

The trial court has ruled that a filing fee is unconstitutional "when it is used as a revenue collecting device," and we think this judgment should be affirmed.

## B. The License Fee

The Appellants have attempted to justify the $50.00 deposit, as well as the party assessment, on the theory that it is necessary not only for revenue purposes but also to "regulate" the size of the ballot by restricting access to "serious candidates."

Our system of democratic government is founded on the elective franchise; and, as the court said, in *United States v. Slater*, D, Texas, 1881, 6 F. Rep. 824: "The Legislature cannot enlarge it or restrict it and can only regulate it so far as their authority is expressly or by necessary implication given in the constitution."

In a recent Texas three-judge case, *Garza v. Smith*, *supra*, pp. 137-138, the court made the following finding: "(T)he Texas Constitution limits the state legislature's power to regulate elections to that legislation necessary "to detect and punish fraud and preserve the purity of the ballot box" and to protect the exercise of free suffrage from "all undue influence . . . (by) power, bribery, tumult, or other improper practice." The State of Texas was a party to this lawsuit and is bound by the Court's construction of the State Constitution. Under this ruling there is certainly no constitutional grant of authority to the State Legislature to impose either a filing fee or party assessment for regulatory purposes.

The Appellants urge Art. 6, Sec. 4, of the Texas Constitution as the necessary authority for the statute requiring the filing fee and party assessment; but

*United States v. Texas, supra,* p. 251, rejected this provision as a justification of the poll tax. "Purification and protection of the ballot," the court said in that case, "may be accomplished by other means as the State of Texas has recognized by the passage of numerous provisions."

Two other three-judge Texas courts have recently been called upon to pass judgment upon the same provision of the Texas Constitution. In *Beare v. Smith, supra,* the Court held that this section did not justify an annual registration system for voters; the court dismissed the purification claim as "one that cannot be accepted," and held that "other effective safeguards against fraud must exist." In *Garza v. Smith, supra,* the court said that the difficulty with the fraud and undue influence argument in that case was that "it is not supported by the evidence before us." And neither is there any evidence before the Supreme Court in the case at bar of the necessity for limiting the ballot to "serious candidates" by eliminating "frivolous candidates" or "nuisance candidates."

Mr. Justice Harlan, in *Williams v. Rhodes, supra,* has stated: "The fear of frivolous candidates and the bed sheet ballot is shown to be meretricious by the history of Ohio elections prior to 1952." See also *Socialist Labor Party v. Rhodes,* 1970, 318 F. Supp. 1262; and *Chavis v. Whitcomb,* 1969, 305 F. Supp. 1364, 1390.

Assuming, without conceding the constitutional legitimacy of such an objective, due process nevertheless

requires that the state accomplish that end narrowly and fairly. See: *Williams v. Rhodes, supra*, at pp. 32-33; *Shelton v. Tucker*, 1960, 372 U.S. 539, 545; *Staub v. City of Baxley*, 1957, 355 U.S. 313, 322-325; *Bond v. Floyd*, 1966, 385 U.S. 116.

As Mr. Justice Marshall said, in *Hall v. Beals, supra*, the limitation may be justified "only when the exclusion is the least restrictive method of achieving the desired purpose."

"The power to regulate implies the existence, and not the destruction of the thing to be controlled," the Supreme Court has held. *Grand T. W. Railway v. South Bend*, 1912, 227 U.S. 544, 555.

But in Tarrant County, Texas, the incumbent office holders have "regulated" themselves out of opposition to such an extent that 77% of all filing fee money received by the County Democratic Chairman in 1970 came from incumbents. It would thus appear that the Texas statutes are designed to keep the rich out of the County Jail, *Tate v. Short, supra*, and the poor out of the County Court House.

The trial court has ruled that a filing fee is unconstitutional "when made an absolute requirement in order for a candidate to get his name on the ballot." Then the court goes on to suggest a pauper's affidavit or nominating petition as possible alternatives to the filing fee.

Incumbent office-holders, who have been accustomed to buying their offices with high filing fees, like seats on the New York Stock Exchange, have threatened

to take out display ads in the newspapers with photostatic reproductions of the pauper's affidavit of any indigent who dares to announce against them. Dr. J. D. Tomme, one of the Appellants, who stands to lose a 5% commission on filing fees handled as County Democratic Chairman, has advised a group of county officials as follows: "The stigma of a pauper's oath would make some pretty good campaign material." *Fort Worth Star-Telegram*, April 9, 1971.

The pauper's affidavit as an alternative would thus become an even more invidious form of discrimination than the filing fee, for it would exchange insult for injury. As Mr. Justice Jackson said, in *Edwards v. California*, *supra*, "It would permit those who were stigmatized by a state as . . . paupers . . . to be relegated to an inferior class of citizenship. It would prevent a citizen from seeking new horizons . . . . It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity."

Although a nominating petition may not be the least restrictive method of restricting ballot access "to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters," *Briscoe v. Kusper*, *supra*, p. 1054, certainly it would be a less restrictive method than the payment of filing fees.

According to the finding of the District Court, 32 States out of the 50 have filing fees. But 49 States make use of nominating petitions, *Williams v. Rhodes*, *supra*, with the breakdown of signature requirements,

according to *Georgia Socialist Workers Party v. Fortson, supra*, being as follows: de minimus to 0.1%—16 states, 0.1 to 1%—26 states, 1.1% to 3%—3 states, and 3.1% to 5%—4 states. See also: *Socialist Labor Party v. Rhodes, supra*, p. 1268; *Jackson v. Ogilvie*, 1971, 39 L.W. 2456, 2457, L.W. 3362; and *Socialist Workers Party v. Rockefeller, supra*.

The Secretary of State, who is a party to this lawsuit, has recommended to the Texas Legislature that a "unitary primary" be adopted as a substitute for the separate party primaries. Nominating petitions are already required of non-partisan or independent candidates, Art. 13.50 and Art. 13.53, *Texas Election Code*, and this requirement could very easily be extended to party candidates in a unitary primary, if there is any compelling necessity to restrict access to the ballot.

The dictum in the lower court's decision regarding "reasonable fees" has encouraged incumbent office holders in Texas to bring pressure on the State Legislature, which is presently in session, to enact a new set of filing fees amounting to 20% of the annual salary of the office. *Fort Worth Star-Telegram*, April 9, 1971.

The three-judge court, in *Campbell v. Davenport, supra*, a case involving the very filing fee statutes here under attack had this to say about the Texas filing fees: "A fee of $100 or even $500 might be explainable primarily in terms of regulation. But it strains our imagination to accept the commissioner's

argument that an assessment of some $2,000 is primarily for purposes of regulation. The most reasonable explanation of the size of this assessment is to raise revenue to cover the cost of the primary. This conclusion is borne out by the fact that the extra funds collected must be refunded. Certainly this assessment cannot be rationalized as a deterrent to the nuisance candidate."

The Texas Supreme Court has distinguished between "maintenance" and "regulation" of primary elections, *Waples, et al. v. Marrast, supra*, holding that under the State Constitution a "revenue tax" to finance the former is invalid, while a "license fee" to finance the latter is valid, *Hoeffling v. City of San Antonio*, 1892, 85 Tex., 20 S.W. 85, 87, ". . . but it must be such a fee only as will legitimately assist in the regulation, and it should not exceed the necessary or probable expense of issuing the license and inspecting and regulating the business which it covers."

Although the Texas Constitution may permit a reasonable fee to cover the actual cost of regulation, many recent federal cases have held that cost recoupment is not a legitimate justification for statutory restriction of a fundamental constitutional right.

In *Valenciano v. Bateman*, 1971, 39 L.W. 2523, the court, citing *Shapiro v. Thompson*, 1969, 394 U.S. 618, held that Arizona could not restrict county medical care to those indigents who had lived in the county a certain period of time, to preserve the fiscal integrity of its programs.

"The ability to pay is not a legitimate criterion for the state to employ," the court said in *Hull v. Petrille*, 1971, CA 2, 39 L.W. 2568, striking down a license fee for newspapers.

*In Re Smith*, 1971, 39 L.W. 2487, holds that a state may not bar access to bankruptcy court to an indigent unable to pay the statutory filing fee of $50.00.

Mr. Justice Brennan, in *Tate v. Short, supra*, wrote: "Since Texas has legislated a 'fines only' policy for traffic offenses, that statutory ceiling cannot . . . limit the payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent without the means to pay his fine."

In *Boddie v. Connecticut, supra*, the United States Supreme Court held that a state may not bar access to divorce court to an indigent unable to pay the statutory filing fee of $45.00. "Other alternatives exist to fees and cost requirements," the court said. "(T)he state's asserted interest in its fee and cost requirement as a mechanism of resource allocation or cost recoupment . . . was offered and rejected in *Griffin v. Illinois*, 351 U.S. 12(1956)."

The three-judge court below has ruled that a $50.00 filing fee, whether for revenue or regulation, is invalid under the Federal Constitution. The court, by dictum, speculates that a "reasonable fee" may be permissible if it should be decided at a later date that the State has a "compelling interest" in regulating the ballot; "but the dimensions of reasonableness within which the State may safely impose a fee," the court said,

"are indeed low and narrow."

There is no formula for the determination of reasonableness. *Go-Bart Imp. Co. v. United States*, 1930, 282 UU.S. 344, 357.

Mr. Justice Black groped with a definition in *Green v. United States*, 1957, 356 U.S. 165, 197: "Reasonable," he wrote, "that irrepressible, vague and delusive standard which at times threatens to engulf the entire law, including the Constitution itself, in a sea of judicial discretion."

Have the Appellees won only the right to relitigate the reasonableness of a new set of filing fees every time the Texas Legislature convenes? Mr. Justice Brandeis had a word of warning: "Do not pin too much faith in legislation. Remedial institutions are apt to fall under the control of the enemy and to become instruments of oppression." *Mason, Brandeis*, p. 585.

Judge Homer Thornberry, in *United States v. Texas, supra*, p. 254, declared: "If the State of Texas placed a tax on the right to speak at the rate of one dollar and seventy-five cents per year, no court would hesitate to strike it down as a blatant infringement of the freedom of speech. Yet the poll tax as enforced in Texas is a tax on the equally important right to vote."

The Supreme Court of the United States has dealt with attempts to license or tax fundamental constitutional rights. In *Grosjean v. American Press Co., supra*, a tax on gross receipts of newspapers was found

to be an abridgement of the freedom of the press. An ordinance requiring a permit to distribute handbills was held invalid on its face, in *Lovell v. City of Griffin, supra*, for the same reason. And in *Murdock v. Pennsylvania, supra*, an ordinance requiring the payment of a license tax as a precondition to the pursuit of certain religious activities was stricken down as a denial of First Amendment rights. In answer to the contention made in *Murdock* that "the fact that the license tax can suppress or control this activity is unimportant if it does not do so," the court observed: "But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise of a right granted by the Bill of Rights. *A State may not impose a charge for the enjoyment of a right granted by the federal constitution.*"

The right to seek public office, as well as the right to vote, is a fundamental constitutional right. *Jenness v. Little, supra; Thomas v. Mims, supra;* and *Stapleton v. Clerk, supra.*

We cannot give some constitutional rights a preferred position without relegating others to a deferred position. *Brinegar v. United States*, 1949, 338 U.S. 160, 180.

If the State of Texas cannot require a license fee of one dollar and seventy-five cents on the right to speak, or publish a newspaper, or distribute handbills, or practice religion, or vote, then it certainly cannot require a "reasonable fee," however "low and narrow," as a precondition to the right to seek public office, which is "an analogue of the right to vote."

Rich or penniless, Wischkaemper's American citizenship under the Federal Constitution pledges his entire strength and even his life to the defense of Texas as a part of the United States, and his right to vote or to seek public office in any part of the land he must defend is something Texas must respect under the same instrument.

"Unless this court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards v. California, supra.*

## CONCLUSION

It is submitted that the questions presented by this appeal are either unsubstantial or have already been decided by this Court; and that plenary consideration by the Court is unwarranted.

Respectfully submitted,

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I, A. L. Crouch, one of the attorneys for the Appellees, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14 day of May, 1971, I served a copy of the foregoing Motion to Dismiss or Affirm on the Appellants by depositing a copy in the United States mail, postage prepaid, and addressed to the attorneys of record for Appellants as follows:

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NO. ~~1606~~

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

MARTIN DIES, JR., ET AL.,
*Appellants*

vs.

VAN PHILLIP CARTER, ET AL.,
*Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

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## INDEX


| | Page |
|---|---|
| OPINION BELOW | 1 |
| JURISDICTION | 1 |
| STATUTES INVOLVED | 3 |
| SUMMARY OF ARGUMENT | 4 |
| STATEMENT | 5 |
| INTRODUCTION | 7 |
| ARGUMENT | 10 |
| I. Issue Governed By Rational Relation Test | 15 |
| II. Application of Rational Test | 15 |
| III. Enactment of House Bill 5 | 22 |
| CONCLUSION | 30 |
| CERTIFICATE OF SERVICE | 32 |
| EXHIBIT "A" | 33 |

## AUTHORITIES

Cases:


| | Page |
|---|---|
| Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) | 12, 24 |
| Cipriano v. City of Houma, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969) | 12 |
| City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) | 12 |
| Flast v. Cohen, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968) | 2 |
| Florida Lime & Avocado Growers v. Jacobsen, 362 U.S. 73, 80 S.Ct. 568, 4 L.Ed.2d 568 (1960) | 3 |
| Georgia Socialist Workers Party v. Fortsen, 315 F.Supp. 1035 (1970) | 20 |
| Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) | 13 |
| Jenness v. Fortson, 39 L.W. 4791 (1970) | 7, 10 |
| Jenness v. Little, 306 F.Supp. 925 (1969) | 20 |
| Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1911) | 24 |
| Kramer v. Union Free School District, 395 U.S. 621 (1969) | 12 |
| McDonald v. Board of Election Commissioners of Chicago, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969) | 11, 25 |

McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961) ..... 25

Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970) ..... 24, 25, 26

Pate v. El Paso County, 324 F.Supp. 935 (W.D. Tex. 1970) aff'd 400 U.S. 806, 91 S.Ct. 55, 27 L.Ed.2d 38 (1970) ..... 24

Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) ..... 24

Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944) ..... 7, 9

Snowden v. Hughes, 321 U.S. 1, 88 L.Ed. 497 ..... 24, 25, 27

United States v. Georgia Pub. Serv. Comm., 371 U.S. 285, 83 S.Ct. 397, 9 L.Ed.2d 317 (1963) ..... 2

Walters v. City of St. Louis, 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1954) ..... 24

Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) ..... 11

Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955) ..... 24

Yick Wo v. Hopkins, 118 U.S. 356, 30 L.Ed. 220 (1886) ..... 14

Zemel v. Rusk, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965) ..... 2

UNITED STATES STATUTES:

28 U.S.C. §1253 ..... 1, 2

28 U.S.C. §2101(b) ..... 2

CONSTITUTION OF TEXAS:

Article XVI, Section 2 ..... 3

TEXAS ELECTION CODE:

Article 13.07a ..... 2 et seq.

Article 13.08 ..... 2 et seq.

Article 13.08a ..... 2 et seq.

Article 13.15 ..... 2 et seq.

Article 13.16 ..... 2 et seq.

Article 13.50 ..... 10

LAW REVIEWS:

83 Harvard Law Review 95 ..... 11

NO. 1606

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

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MARTIN DIES, JR., ET AL.,
*Appellants*

vs.

VAN PHILLIP CARTER, ET AL.,
*Appellees*

---

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

---

## BRIEF FOR APPELLANTS

---

## OPINION BELOW

The opinions of the Three Judge Court appear in the Single Appendix at pages 145 and 154. The opinions are reported at 321 F.Supp. 1358 (1970). This case involves filing fees for political party primaries. The Three Judge Court held that to use a filing fee as a revenue raising device or as an absolute requirement for access to the ballot is unconstitutional.

## JURISDICTION

The Appellants invoke the jurisdiction conferred upon this Court by 28 U.S.C. §1253 to review on direct appeal an order granting a permanent injunction in a civil action required by Act of Congress to be heard and determined by a three-judge district court.

The judgment was entered on the 21st day of December, 1970 (A. 160). Since it was a final adjudication on the merits of the issues presented, the Appellants filed Notice of Appeal in the district court on the 19th day of February, 1971 (A. 162), which was within the 60-day period prescribed by 28 U.S.C. §2101(b), and in compliance with Rule 11(3) of this Court. On the 21st day of April, 1971, the Appellants complied with the requirements of Rule 13 of this Court. Thereafter, this Court by its Order of June 7, 1971, noted probable jurisdiction. The foregoing clearly demonstrates the timeliness of the procedural steps necessary to invoke the jurisdiction of this Court.

The Appellees sought in the court below to have the Appellants (certain state officials charged with the responsibility of administering the election laws of the State of Texas and certain county and statewide officials of the Democratic Party in Texas) enjoined from the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code. In addition, the Appellees sought to have the court below declare the aforesaid provisions of the Texas Election Code unconstitutional. The court below granted the relief sought by the Appellees by declaring Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code unconstitutional, and further decreed that the State of Texas, through its political parties, was enjoined from the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code.

The jurisdiction of this Court to review the judgment of the court below is conferred by 28 U.S.C. §1253. *Flast v. Cohen,* 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968); *Zemel v. Rush,* 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965); *United States v. Georgia Pub. Serv. Comm.,* 371 U.S. 285, 83 S.Ct. 397, 9 L.Ed.2d 317

(1963); *Florida Lime & Avocado Growers v. Jacobsen*, 362 U.S. 73, 80 S.Ct. 568, 4 L.Ed.2d 568 (1960).

## STATUTES INVOLVED

The Legislature of the State of Texas, acting pursuant to the mandate of Section 2 of Article XVI of the Constitution of Texas to provide for laws regulating elections within the State of Texas, has enacted various statutes dealing with the election process within this State. The statutes under attack in this proceeding constitute a portion of such election laws of the State of Texas and are statewide in application. The enactments held invalid by the court below are sections 13.07a, 13.08, 13.08a, 13.15, and 13.16. The full text of these statutes appear in Appendix C of Appellant's Jurisdictional Statement. The relevant portions of these statutes are quoted here for the court's convenience:

> "Art. 13.07a. Deposit to accompany application for place on ballot.
>
> "(1) Every candidate for public office who is subject to assessment by the county executive committee for a portion of the expenses of holding the primary election, except candidates for the Legislature and for the State Board of Education, shall pay to the county chairman, at the time of filing his application for a place on the ballot, a deposit of fifty dollars.
>
> . . . . . .
>
> "(2) After the county executive committee makes the assessments provided for in Section 186 of this code, it shall refund to each candidate within thirty days thereafter the amount of the payment in excess of the assessment against the candidate if the deposit exceeds the assessment. If the deposit does not exceed the assessment, the balance due on the assessment shall be paid as provided

in Section 186. Amended by Acts 1967, 60th Leg., p. 1909, ch. 723, § 41, eff. Aug. 28, 1967.

"Art. 13.08. Expenses of primary.

"(1) Prior to the assessment of the candidates, the county committee shall carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary pool books, blank stationery and voting booths required, compensation of election officers and clerks, and all other necessary expenses of holding the general primary and second primary in such county and on the second Monday in February preceding each primary, shall apportion such cost in such manner as in their judgment is just and equitable among the various candidates for nomination for district, county, and precinct offices only as herein defined, . . . . In making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made. . . . . ... the difference between the amount of the assessment and the amount of the deposit which accompanied the candidate's application must be paid to the chairman on or before the fourth Monday in February; and no person's name shall be placed on the ballot unless he pays the assessment within the prescribed time."

## SUMMARY OF ARGUMENT

The three judge court held that the compelling State interest test applied to primary filing fees. The Appellants contend that the rational relation test applies.

The three judge court held that a filing fee violates the first amendment and due process and equal protection causes of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get

his name on the ballot. The Appellants contend that both of these holdings are erroneous.

## STATEMENT

This case had its initial origin in three separate suits (A. 49) which were consolidated by the Court below (A. 49). Some of the Appellees were candidates for election, and other Appellees were individuals who desired to vote for those Appellees seeking to run for election to public office. Please note that this is a *party primary* case and not a General Election case.

The Appellees brought this action on behalf of themselves and the class of all other persons similarly situated requesting that Appellants be enjoined and restrained from enforcing the provisions of Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code which require that candidates for party nomination to offices in the general election must pay filing fees as set out in the challenged sections of the Texas Election Code in order to have their names placed on the official ballot in the Democratic primary election. As a basis for such relief, the Appellees alleged that the requirement for the payment of such filing fees violates the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. Some of the Appellees are candidates for election to certain local and statewide offices, who alleged that they could not afford to pay the filing fee required to have their name placed on the ballot in the Democratic Party primary election. The remaining Appellees are Intervenors who desire to vote for the Appellees who were candidates for public office.

Specifically, the Appellees have alleged that the filing fee assessments are unreasonably high and without any

reasonable relation to any legitimate legislative purpose.

The cost of primary elections in Texas in all counties must be paid out of assessments made against the candidates who seek nomination to precinct, county or district public office in such election (Stipulation of Fact No. 15, A. 112). In accordance with the provisions of Article 1308 of the Texas Election Code the county executive committee of the political party apportions the cost, by assessment, of primary elections among the various candidates. (Stipulation of Fact No. 6, A 110)

Those Appellees who were candidates for various elective offices in the primary elections did not make the required payment of their assessment or filing fees and therefore their names would not, and could not, pursuant to the provisions of the challenged statutes, appear upon the primary election ballot (Stipulations of Fact Nos. 10, 11, 13, 14, 21, 22, 23(d)(e), 31, 35, 36, A. 109). However the court below by an order dated the 2nd day of May, 1970, relieved the Appellees from the requirement of paying such assessments or filing fees (A. 105). The filing fees of the Appellee Pate were $1,424.60 (for the office of County Commissioner), for the Appellee Carter the sum of $1,000.00 (for office of Commissioner of the General Land Office), and for the Appellee Wischkaemper the sum of $6,300.00 (for the office of County Judge). See Stipulations of Fact Nos. 31, 23(d), and 8, A.109)

The procedure used in arriving at the assessment is set out in Art. 13.08(1):

> "(1) Prior to the assessment of the candidates, the county committee shall carefully estimate the cost of printing the official ballots, renting poll-

ing places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks, and all other necessary expenses of holding the general primary and second primary in such county . . ."

The court below, in its opinion and judgment, has declared the challenged provisions of the Texas Election Code unconstitutional and has enjoined their enforcement by the Appellants.

## INTRODUCTION

This Court has held that political party primaries are State action. *Smith v. Allwright,* 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944). We feel bound by this Court's decision in the *Smith* case, and therefore, in the main portion of this brief we shall treat the political party primaries as though they were exactly the same thing as the general election. We do feel that a valid distinction exists between a nominating election and a general election.

We would respectfully direct this Court's attention to its recent opinion of *Jenness v. Fortson,* No. 5714-October term, 1970, 39 LW 4791. In this case the court held:

> ". . . there is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization and its candidates on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election."

Thus, this Court found that the State of Georgia had some way to control their general ballot, other than through a filing fee.

Exhibit A of this brief sets forth the full text of House Bill No. 5 which was passed recently by the Legislature of the State of Texas. The Court will note that this Bill is to become effective only upon the condition that, before January 1, 1972:

> "(1) the Supreme Court of the United States does not dispose of the appeal filed in that court from the judgment of the United States District Court for the Northern District of Texas, Dallas Division, in Civil Action No. CA 3-3635-C, styled Van Phillip Carter vs. Martin Dies, Jr., et al., by action which becomes final before January 1, 1972; or
>
> (2) the Supreme Court of the United States affirms or refuses to review the judgment of the dsitrict court in the aforesaid case, or by other action taken upon an appeal of that case *the Supreme Court rules that either of the following sections of the Texas Election Code as they exist before the amendments made by this Act violates the Constitution of the United States: Sections 185a, 186, 186a, 193, and 194.*" (Emphasis added)[1]

This legislation shows how the State of Texas is attempting to deal with the problem of political party primaries, if this Court holds that the statutes in question are unconstitutional. If this Bill becomes effective, because of the ruling of this Court, we would like to point out one possibility which we feel is very much of a probability.

The Bill provides that if one is unable to pay the filing fee, that he can file a pauper's affidavit and have his name placed on the political party primary ballot. We can almost promise this Court that there will be some conserted effort by some group, regardless of political persuasion of the particular group, that will

[1]These are the statutes in issue in the case at bar.

flood the ballot. The State of Texas will be forced to immediately call its Legislature into session and try to devise another way to regulate the primary ballot. Aside from the problem of how you finance primaries, filing fees serve to regulate the ballot in primary elections just as they do in general elections. In General Elections the States have an alternative method of regulating the ballot (See *Jenness*). The only alternative method which we can invision to regulate a primary ballot is to also require a petition in order to get on the primary ballot. Of course, this Court can see that this defeats the whole purpose of having primaries. The alternative to a filing fee as a regulatory measure, is either to have some sort of primary to see who can get on the primary ballot or require a petition. We recognize the problems of wealth and join with those who believe that a man's wealth has little to do with his qualifications to hold public office. However, the solution to regulating the number of people who get on a primary ballot is neither an easy one or capable of clear and precise judicial managable standards.

One solution to the dilemma into which this Court is leading political parties, if they hold that filing fees cannot be used to regulate primary ballots, would be to re-examine the broad sweeping language of *Smith v. Allwright,* supra. The object of the laws in *Smith* was to keep an entire class of voters out of the voting book. This Court properly held that the white primaries violated the Equal Protection clause through invidious discrimination. The vehicle that this Court used to invalidate the challenged laws was a determinative that a political party primary was State action. We ask this Court to reconsider the problem of whether or not everything involved in a primary election must be State action and must be run exactly the same way as a General Election. A poor man, if he has a

modicum of support, has an alternate route to having his name on the ballot and to ultimate election. He does not have to run in a party primary. The laws of the State of Texas for getting on the general ballot are much more lenient than those of the State of Georgia. See Texas Election Code, sections 13.50 et seq. and compare *Jenness v. Fortson,* supra.

We feel bound by this Court's decision in *Smith,* and will therefore, treat this appeal as though the primary was exactly the same as the general election. Because there is an obvious difference in a primary and the general election, we feel that this Court, after it thoroughly examines the issues at bar, will desire to reconsider the broad, sweeping language of *Smith.*

## ARGUMENT

The central issue in a filing fee case involving a primary election is whether or not the burden of proof is on the State to show a compelling State interest in order to sustain its laws, or whether the burden of proof is on the Appellees to prove that the State laws do not bear a rational relation to the ends sought to be accomplished and that the laws cause invidious discrimination.

*The reasoning of the three judge court.* The first step in the reasoning of the court below was:

> "Since the rights of the intervenors as voters will be determinative of the constitutionality of the laws here attacked, we deem it unnecessary to discuss the rights of the candidates."

Shifting the thrust of the whole case from one involving candidates and filing fees to one involving rights of voters is the point at which the court first committed error. The Court decided that the voters in the case at

bar were being denied the right to vote, that the right to choose one's candidate involved the First Amendment, and that the compelling State interest test applied. The Court cited *Williams v. Rhodes,* 393 U.S. 23, 89 S. Ct. 5 (1968). Judge Thornberry, in his concurring opinion thought that the *Williams* test was involved and that only a compelling State interest can justify a State's limiting First Amendment freedoms.

This interpretation of the *Williams* case finds support in 83 Harvard Law Review 95:

> "The *Williams* Court also characterized a second interest as fundamental under its equal protection analysis, and in doing so marked another striking departure from past doctrine. In past decisions, the fundamental interest in the franchise has been invoked when one's vote was not counted, when free access to the ballot box was impaired, or when one's vote was not given equal weight vis-a-vis other votes in the political unit. The voting interest protected in *Williams* was quite different. It was an interest in casting a ballot for the *particular candidate* that one prefers above all others. The Court seems to have interpreted 'the right to cast . . . [a] vote effectively' to protect a full range of self-expression, to extend not only to the casting and counting of ballots but also to what a voter may put on his ballot." (emphasis supplied)

Mr. Chief Justice Warren recognized the very problem which is involved in this case in *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802, 806, 89 S. Ct. 1404, 1407 (1969):

> "Before confronting Appellants' challenge to Illinois' absentee provisions, we must determine initially how stringent a standard to use in evaluating the classifications made thereunder and whether distinctions must be justified by compelling State interest;"

The Appellants submit that the three judge court did not properly understand the distinction between the line of cases which *McDonald, Williams,* and *Jenness* represent on the one hand, from the line of cases represented by *Kramer v. Union Free School District,* 395 U.S. 621, 89 S. Ct. 1886 (1969); *Cipirano v. City of Houma,* 395 U.S. 701, 89 S. Ct. 1897 (1969); *Phoenix v. Kolodziejski,* 399 U.S. 204, 90 S. Ct. 1990 (1970); *Carrington v. Rash,* 380 U.S. 89, 85 S. Ct. 775, 13 L. Ed. 2d 675 (1965).

Mr. Chief Justice Warren pointed out the distinction between these two lines of cases in *Kramer.* In footnote 6 found on page 1889 of the Supreme Court Reporter edition:

> "This case presents an issue different from the one we faced in McDonald v. Board of Election Comm'rs of Chicago, 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969). The present appeal involves an absolute denial of the franchise. In McDonald, on the other hand, we were reviewing a statute which made casting a ballot easier for some who were unable to come to the polls. As we noted, there was no evidence that the statute absolutely prohibited any one from exercising the franchise; at issue was not a claimed right to vote but a claimed right to an absentee ballot. *Id.,* at 807-808, 89 S. Ct., at 1408."

In *Kramer, Carrington, Cipriano, Kolodziejski,* the laws in question were fencing out voters entirely from the voting booth. Otherwise qualified voters were denied the right to vote entirely because of a particular classification into which they fit. They could not go to the polls at all to vote for anyone in the particular election in question.

In *McDonald,* the issue involved an extension of the basic right to vote. That is, your basic right is to appear

at the polls in person and vote, and an an absentee ballot extends that right. Any extension of that right is a legitimate regulation by the State and should be tested under the rational relation test.

In the case at bar, no voter is fenced out of the voting booth by the filing fee requirement. The filing fee simply limits the person for whom the voter may cast his ballot. This is exactly the same problem with which the Court was confronted in *Williams*. The Ohio laws did not prohibit any voter from voting. The Ohio law simply made it impossible for another political party to get organized in the state of Ohio. Mr. Justice Black held that "the totality of the Ohio restrictive laws taken as a whole impose a burden on voting and associational rights which we hold is an invidious discrimination in violation of the Equal Protection Clause."

In *Jenness,* Mr. Justice Stewart found that the laws of the State of Georgia did not create an invidious discrimination and bore a rational relation to a legitimate state end.

It is true that language can be found in both *Williams* and *Jenness* which mention the words compelling state interest and important state interest. This court will recall that traditionally First Amendment problems have been treated under the compelling state interest test, while equal protection problems have been treated under the rational relation test. Please see the dissenting and concurring opinions in *Williams,* and *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 86 S.Ct. 79, 16 L.Ed.2d 169 (1966).

There is another school of thought which says that any time voters rights problems arise, that the laws are subject to close and careful scrutiny, *Kramer*. The

Harvard Law Review staff, supra, at page 90, thought that the *Williams* court expanded a developing doctrine by including a First Amendment interest in the pantheon of fundamental interests for purposes of equal protection analysis.

Any time that voter rights are involved, the court can create arguments that talk about political expression and reach First Amendment rights. One can say that the vote is the ultimate of political expression, and that to limit the choice of a voter places a limitation on his free speech rights. Therefore, anything which limits a voter's choice of candidates, such as a fee, or a petition in order to get on the ballot (Jenness) is a first amendment problem.

We reject this analysis. We think that this case is about fees and political party primaries, and whether two men: one rich and one poor, are being treated equally, or whether there is invidious discrimination. To us that is an equal protection problem and the overlap between equal protection and First Amendment rights is slight. We submit that voter's rights do constitute a special category of equal protection problems. See the reasoning found in *Yick Wo v. Hopkins*, 118 U.S. 356, 30 L.Ed. 220 (1886).

This Court in *Kramer* correctly pointed out the distinction which this court should use in determining whether or not a particular limitation is a voting rights case or a case where the state is exercising legitimate interests in regulating the ballot. The court should look at the law and determine whether or not it keeps any voter from the voting booth. If it does, then fundamental voting rights are at stake and the law is subject to close and careful scrutiny and a compelling

state interest must be shown.[1] If the law under examtion does not prohibit anybody from voting, then the rational relation test should be applied by the court.

Access to a primary ballot by candidates is an equal protection problem. The Appellees are wanting to associate with a certain particular group, and the issue is whether or not they are being deprived of equal protection of the law.

## I. ISSUE GOVERNED BY THE RATIONAL RELATION TEST.

A review of the cases since *Kramer* reveal that once any court decides that the state has the burden of establishing a compelling state interest, that the ball game is really already over. Therefore, we are going to discuss in detail the problem of whether or not a filing fee in a political party primary bears a rational relation to a legitimate state end. However, we submit that for the reasons stated in the remainder of this brief, that if the State of Texas must meet the burden of establishing that a compelling state interest exists, then there do exist such interests and this court should reverse the Three Judge Court. We would point out to this court that the record contains a large number of stipulations. There are ample stipulations in this record for the court to decide this case on the merits, regardless of who has the burden of proof. This case should not be remanded for further development of facts.

## II. APPLICATION OF THE RATIONAL RELATION TEST.

Because of the action of the Legislature of the State of Texas in enacting the conditional amendments to

[1]For example, should a convicted felon be denied the right to vote.

the Texas Election Code, this Court is presented with a two-fold problem: deciding the validity of the second statute, if the Court finds that the first statute creates an invidious discrimination which keeps the statute from bearing a rational relation to a legitimate state interest.

The three judge court has held that a filing fee may not be used as a revenue raising device. We would like to point out that the filing fee is not used in Texas as a revenue raising device, in the traditional sense that "revenue raising" is used. When Texas had a poll tax, this was used as a revenue raising device. The money which was collected from the sale of poll taxes went into the permanent school fund to help finance the education of the children of the State of Texas. No excess money is raised by the filing fees. All of the money that it does not take to run the political party primaries is refunded to the candidates, Article 13.08. We can more accurately describe the filing fee, as it is used in the State of Texas, as a method to finance a primary election, rather than a revenue raising device. We should therefore read the lower court's opinion as saying that it is unlawful to use a filing fee as a method to finance a primary election.

We see four methods that political parties can use to finance their primaries. *First,* they may use filing fees and the three judge court has struck this down. *Secondly,* they may hold no primary at all and nominate by convention. This eliminates the cost almost entirely. *Third,* we may require the States to finance primary elections. This is done in a number of States. *Fourth,* we may require that the primaries be financed through voluntary contributions. We feel that this Court can see that the alternatives left open to political parties who desire to hold primary elections is relevant

to the question of whether or not a filing fee as a financing device bears a rational relation to a legitimate State purpose. Consequently, we would like to explore with the Court just what happens when you must finance a primary election through either alternatives number three or four listed above.

Let us first examine the problems which arise when the State finances the primary elections. First, since the State is going have to finance all primary elections, this Court will have to examine (similar to the problems that arose in *Williams* and *Jenness*) the laws of all fifty States and see if their definition of when a "political body" becomes "political party" so as to become entitled to have the State finance their primary. Secondly, if a third party candidate gets the requisite number of votes for governor to be a political party in the next election, must the State, besides financing a primary for governor in the next election, also finance a primary for each and every public office in each and every precinct within the State? Thirdly, the review of many well reasoned and knowledgable studies reveal that the stability of the governments of the English speaking peoples of this world is due primarily to the fact that they have essentially two party systems. This Court knows better than the authors of this brief that the ties that bind the Democratic Party and the Republican Party together are much weaker today than they were twenty years ago. If the State agrees to finance everybody at a primary election, we submit that this probably will cause a prolifieration of political parties and contribute to the breakdown of our two party system. It is quite a different thing to say that the ease with which a party may have access to the general ballot, applies equally to the State financing a party primary. Mr. Justice Black, in *Wil-*

*liams,* rejected as "theoretically imaginable" the proliferation of political parties. In *Williams* the problem was the totality of laws to get on the ballot. No one was agreeing to finance anyone. If you start having free money available, the problem *may* be different.

The Appellants submit that to do away with the candidate's having to pay these filing fees, which pay for the primary elections, will actually place another burden upon the voter which is not presently there. If the costs of conducting the primary elections are removed from those candidates who are seeking political offices and which do so under the banners of a particular political party, then the alternative which the court below has forced upon the State of Texas is that they must be assumed by State and local governmental bodies. Today these governmental bodies are being increasingly faced with the almost unsurmountable problems of the rising demands for the use of the tax dollar. The court below in its decision has added yet another burden to the staggering costs of State and local government—the costs of financing the primary elections of all political parties. Needless to say, the taxpayer will ultimately have this additional cost added to his already increasngly staggering burden. The court below has apparently treated the taxpayer and the voter as two separate and distinct bodies. This, however, is to create a fantasy, because each and every voter is also either directly or indirectly a taxpayer. Actually the decision of the court below has merely transferred the costs of primary elections from the candidates to the voters. The court below has based its decision essentially on the assumption that the present filing system in Texas as to primary elections places an undue burden on the voter. The Appellants submit that the decision of the court below, in now placing the

costs of the primary elections upon the voter, places a far heavier burden on the voter than existed prior to the court's decision. In addition, the court's decision has virtually insured a large list of candidates in every primary election with additional run-off elections then becoming virtually certain with increased election costs. The court below has not lessened the burden upon the voter by its decision—it has merely increased the voter's already staggering tax burden. Perhaps it might be well at this time for this Court to also consider the rights of the taxpayers of this country as well as their duties to support the costs of our government.

How well does the alternative of having party primaries financed by voluntary contributions fare? We would point out to the Court that there is no guarantee that sufficient voluntary contributions could be raised to conduct primaries. If this were to happen, then the logical response which should be made to this situation would be that since the parties do not have enough support to finance a party primary, the parties just do not need to hold primaries. We would ask this Court whether or not that argument sounds familiar. Has the argument not been advanced many times that if a candidate does not have sufficient support to raise the filing fee, that he does not need to be a candidate? That is exactly the same type of reasoning that you would be applying to political party primaries if they could not raise sufficient private support to finance their primaries. It seems to us that the requirement that primaries be privately financed presents a circular solution to the problem, which is no solution at all. That is, if the outlawing of filing fees has the effect of eliminating the primary altogether, it is not really a solution to the poor persons' or the rich persons' problem.

From the above discussion, one thing can be clearly seen: To *absolutely* outlaw *all* filing fees as a financing device for party primaries is not a workable solution. We submit that filing fees are the best solution to financing party primaries.

This concludes our discussion of the first of several interests, which the State must attempt to balance in enacting the filing fees as an absolute requirement to getting on the ballot. We have seen that as far as financing the primaries, there certainly are problems with any alternatives to eliminating the filing fee as a financing device.

A second interest which is involved in the State legislation under consideration here is whether or not the filing fee can be and should be made an absolute requirement in order to get on the primary ballot and be the sole method through which the candidate's name can appear. The case of *Jenness v. Little,* 306 F. Supp. 925 (1969), held that "to prohibit candidates from getting their names on the ballot solely because they cannot post a certain amount of money is illegal and unconstitutional." To the same effect is *Georgia Socialist Workers Party v. Fortsen,* 315 F. Supp. 1035 (1970). Both of these cases involve general elections as opposed to primary elections. As we have pointed out before, the state of Georgia had another way to regulate the size of their general ballot. (*Jenness*) The thrust of our argument is "does the same rationale apply to the primary ballot?" We submit that it does not. The fee can be used by political parties to regulate the size of their primary. The only other method that they can use to regulate the size of the primary is a petition. As we have stated before, this forces a political party to have a primary to see who can get on the primary ballot. Obviously, a petition is not a primary,

but the point is that you are making political parties substitute an onerous requirement of a petition, for the method that they previously used to control the size of their ballot. These petitions will breed litigation as to whether or not the right people signed them and whether or not they were qualified to sign the petition. The interests to be viewed and weighed and balanced are those of an indigent who cannot afford the filing fee, as opposed to the added work and potential litigation that is created by the requirements of a petition. We would respectfully point out to this Court that we understand and agree with and affirm the rationale of Mr. Justice Douglas in *Harper*: "Voter qualifications have no relation to wealth or to paying or not paying this (poll) or any other tax." However, just because a man does not have a filing fee to get on the political party's primary ballot, does not mean that he is foreclosed from the ballot. The facts are that this court has recently held in *Jenness* that a 5% petition requirement is not unconstitutional. The State of Texas requires only 1%. The man who cannot afford the filing fee of the Democratic Primary, is not foreclosed from the ballot. He has other alternatives. He can get on the General Ballot.

It is no argument to respond that the poor man ought to be able to get on the Democratic Party's ballot, rather than having to wait until the general ballot because the Democratic Party nomination is tantemount to election. If the Democratic nomination is tantemount to election, this means that everybody is going to vote in the Democratic Primary. Therefore, if you would be able to convince them in the Democratic Primary, you ought to be able to convince them in November. The Court will notice that we are not asserting that the fact that the man does not have the

money for a filing fee is tantemount to defeat because of the costs of running an election. We do not consider this a relevant question as far as access to the ballot is concerned. We think that as long as a poor man has a reasonable opportunity to get on the ballot in November, that the fact that he cannot get on the party's primary ballot, because he cannot pay the filing fee, does not invidiously discriminate against the poor man. The object of our constitution is to make the ballot equally accessible to all people. The right to vote is deemed fundamental. But how many times does a man have a right to get on a ballot? The question really revolves itself right back into the *Smith v. Allwright.* Is the primary election exactly the same thing as the general election? The Court will note that there is a significant difference between our case and *Smith v. Allwright.* In *Smith,* those persons against whom the law discriminated were kept away from voting entirely. In the case at Bar, those against whom the law discriminates can vote, they just cannot get their own candidate on the ballot. We submit that the distinction which Judge Warren drew in *Kramer,* between *Kramer & McDonald,* applies in this case. When you consider that a political party has a legitimate interest in financing its primary, in controlling the number of people on the ballot so to avoid voter confusion; when you consider the alternatives to using the filing fee to accomplish the previous two ends, and when you consider that the aggrieved party has another avenue open to him to espouse his cause; then the poor man is not invidiously discriminated against by being required, as an absolute requirement to get on a party primary ballot, to pay a filing fee.

## III. ENACTMENT OF HOUSE BILL 5.

We would like to examine the problem of whether or

not HB 5 solved the constitutional problem, in the event this Court should decide that absolute requirements of a filing fee constitutes an invidious discrimination. Texas has not abandoned the filing fee as a financing device for their political party primary. They have simply substituted a pauper's oath to solve the poor man's problem. We assume that the Appellees in this case will argue that this statutory scheme also involves invidious discrimination, and that either the State or private donations should finance the primary election. They will probably argue that to require a poor man to file a pauper's affidavit creates a stigma and amounts to certain defeat in the election, because of the attitude that the everyday voter will have towards the man that has filed a pauper's oath. We would submit to this court that that argument does not hold water. If one follows that argument, then all filing fees are per se invidious discrimination. There will always exist some one who can afford no fee at all.

We would point out to this court that there is also a stigma involved in being rich. It is true that there would probably be more votes lost by a poor man because he filed a pauper's oath than by a rich man because he was rich. However, there are people that we all know personally who refuse to vote for certain candidates because of the amount of wealth which they possess at the time they present themselves as candidates for public office. They consider the wealth just as much stigma as some people consider it a stigma to be a pauper. This court should not let the degree of favor that the voters may hold for wealth or poverty be a basis for declaring all filing fees a per se invidious discrimination.

We submit that the state of Texas has a reasonable solution that does not involve invidious discrimination

in HB 5. If there is an invidious discrimination in having a filing fee be an absolute requirement for access to the ballot, then the pauper's oath solves the problem and erases the invidious discrimination.

There is nothing in the record before this Court to show that the challenged laws made it impossible for Appellees to vote. *Certain of the Appellees may not have had the opportunity to vote for candidates they might have liked to have seen on the ballot,* but this differs drastically from an absolute denial of voting. The primaries simply are not the general elections. The Court should either reconsider *Smith,* or conclude, as we do, that under all the circumstances there is no invidious discrimination. As long as there is an alternative access to the ballot for the poor man, no invidious discrimination exists.

The proscription of the Equal Protection Clause does not go beyond the invidious discrimination, *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563, 573 (1955), for ". . . mere classification, as this Court has often said, does not of itself deprive a group of equal protection." *Carrington v. Rash,* 380 U.S. 89, 92, 85 S.Ct. 775, 13 L.Ed.2d 675, 678 (1965); *Oregon v. Mitchell,* 400 U.S. 112, 127, 91 S.Ct. 260, 266, 27 L.Ed.2d 272, 283 (1970); *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); *Pate v. El Paso County,* 324 F.Supp. 935 (W. D. Tex. 1970) aff'd 400 U.S. 806, 91 S.Ct. 55, 27 L.Ed. 2d 38 (1970). The gravamen of equal protection lies not in the fact of deprivation of a right through state action, but that such deprivation is accomplished by means of an invidious classification. *Snowden v. Hughes,* 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497 (1943); *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1911); *Walters v. City of St.*

*Louis,* 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660 (1954). ". . . [T]he necessity of a showing of purposeful discrimination is no less in a case involving political rights than in any other. It was not intended by the Fourteenth Amendment and the Civil Rights Act that all matters formerly within the exclusive cognizance of the states should become matters of national concern." *Snowden v. Hughes, supra,* 321 U.S. at 11, 88 L.Ed. at 505. See *Oregon v. Mitchell,* 400 U.S. 112, 127, 91 S.Ct. 260, 266, 27 L.Ed.2d 272, 283 (1970). Recognizing that the nature of our federal system allows the states broad leeway with regard to legislation in the field of social, economic, and poltical matters, the decisions of the Supreme Court teach us that any classification resulting from the application of such laws does not offend equal protection as long as it is reasonble and is rationally related to furthering a legitimate state interest.[*]

> "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

*McGowen v. Maryland,* 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393, 399 (1961); *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969).

The Supreme Court has recently had occasion to explore in depth the nature and extent of the power of the states to prescribe qualifications for voting and to

[*]Financing the primaries and regulating the ballot.

regulate the electoral process in *Oregon v. Mitchell*, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970). Despite the diverse views expressed in the five opinions written in that case, it is clear that, with the exception of the statement regarding the power of Congress under Article I, Section 4, the Chief Justice and Justices Harlin, Steward, and Blackmun agree with the following statement from Justice Black's opinion:

> "No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution the qualifications of their own voters for state, county, and municipal offices *and the nature of their own machinery for filling local public offices*. Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904); Minor v. Happersett, 21 Wall. 162, 22 L.Ed. 627 (1874). Moreover, Art. I, §2, is a clear indication that the Framers intended the States to determine the qualifications of their own voters for state offices, because those qualifications were adopted for federal offices unless Congress directs otherwise under Art. I, §4. . . . It is obvious that the whole Constitution reserves to the States the power to set voter qualifications in state and local elections, except to the limited extent that the people through constitutional amendments have specifically narrowed the powers of the States. Amendments Fourteen, Fifteen, Nineteen, and Twenty-Four, each of which has assumed that the States had general supervisory power over state elections, are examples of express limitations on the power of the States to govern themselves. And the Equal Protection Clause of the Fourteenth Amendment was never intended to destroy the States' power to govern themselves, making the Nineteenth and Twenty-Fourth Amendments superfluous. . . . *In interpreting what the Fourteenth Amendment means, the Equal Protection Clause should not be stretched to nullify the States' powers over elections which*

*they had before the Constitution was adopted and which they have retained throughout our history.*". Id., 400 U.S. at 125-126, 91 S.Ct. at 265-266; 27 L.Ed.2d at 281-282." (Emphasis added)

A remote limitation on a particular voter (the possibility that *his* candidate is not on the ballot) is no reason to depart from this principal. The Supreme Court has never suggested that the states have anything but an unimpeachable right under the Constitution to prescribe election procedures within state, and, as long as those procedures "do not invidiously discriminate against any discrete and insular minority" they cannot constitute a denial of equal protection and need not be judged by the compelling interest test. *Oregon v. Mitchell,* 400 U.S. 112, 296, 91 S.Ct. 260, 349-350, 27 L.Ed.2d 272, 379 (1970). Consequently, the laws in question should not have been judged by the compelling interest test.

The question has long been laid to rest with respect to the constitutional right of a candidate to run for public office. In *Snowden v. Hughes,* 321 U.S. 1, 88 L.Ed. 497 (1943), this Court held that the right to become a candidate for state office is a right or privilege of state citizenship, not of national citizenship, which alone is protected by the privileges and immunities clause of the Fourteenth Amendment. This Court made the following observations, at page 502:

"The protection extended to citizens of the United States by the privileges and immunities clause includes those rights and privileges which, under the laws and Constitution of the United States, are incident to citizenship of the United States, but does not include rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law. Slaughter-House Cases, 16 Wall. (US) 36, 74 79 21 L ed 394, 408, 409; Maxwell v. Bugbee,

250 US 525, 538, 63 L ed 1124, 1130, 40 S Ct 2; Prudential Ins. Co. v. Check, 259 US 530, 539, 66 L ed 1044, 1052, 42 S Ct 516, 27 ALR 27; Madden v. Kentucky, 309 US 83, 90-93, 84 L ed 590, 594-596, 60 S Ct 406, 125 ALR 1383. The right to become a candidate for state office, like the right to vote for the election of state officers, Minor v. Happersett, 21 Wall. (US) 162, 170-178, 22 L ed 627, 629-631; Pope v. Williams, 193 US 621, 632, 48 L ed 817, 822, 24 S Ct 573; Breedlove v. Suttles, 302 US 277, 283, 82 L ed 252, 256, 58 S Ct 205, is a right or privilege of state citizenship, not of national citizenship which alone is protected by the privileges and immunities clause."

The Appellees and the court below attempt to distinguish this case by stating that the complaint does not go to the privileges and immunities clause of the Fourteenth Amendment, but rather goes to the equal protection clause and therefore *Snowden v. Hughes* is readily distinguishable. A careful reading of *Snowden v. Hughes,* however, clearly shows that this Court also dealt with the equal protection clause with respect to the constitutional right of a candidate to run for public office in one of the states of the union. In dealing with the equal protection clause, the Court goes on in *Snowden, supra,* to state the following:

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. Taylor & Marshall v. Beckham, 178 US 548, 44 L ed 1187, 20 S Ct 890, 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion. Cave v. Missouri, 246 US 650, 62 L ed 921, 38 S Ct 334, as we reaffirm it now."

If Snowden applies to the privileges and immunities clause and the due process clause, surely it applies to

the Equal Protection Clause of the Fourteenth Amendment.

In addition, this Court's comment in *Williams* that "multitudinous fragmentary groups might justify some regulatory control but . . . at the present time the danger seems to be no more than 'theoretically imaginable' . . ." may well be appropriate when related to *political parties* being placed upon the ballot, but becomes a far different problem when we discuss candidates for a primary. One can but guess how many candidates might make the race for the publicity gained, or whether we will see a return of the abused practice of seeing numerous candidates of the same name entered in the same race for the obvious purpose of aiding or damaging one of the candidates. The potential for "legal disruption" is almost unlimited.

What guidelines could ever be established to determine when any amount of filing fee might become some form of invidious discrimination. How much one individual is willing to sacrifice financially in the way of a filing fee to obtain public office may well discourage another potential candidate with even more financial means. Just as the personal management of one's fiscal affairs varies as to when they feel able to afford a bigger and more ornate automobile, so does the individual determination of whether to pay a particular amount of filing fee vary from potential candidate to potential candidate. The filing fee as a initial step in entering a career based on public service in elective office is no more a form of invidious discrimination by wealth in the following of a career than the license fees required to engage in many businesses, professions or union dues.

## CONCLUSION

The varying interests of the State, the political parties, the candidates, the voters, the taxpayers, and the political subdivisions of the State involved in the election process, present the Legislature of the State of Texas with the complex problem of striking a reasonable and workable balance and solution to regulating the ballot, avoiding voter confusion, financing the election process and making the ballot available to all. The balancing of the many priorities are matters for legislative decision. If the choice of the Legislature is reasonably related to the goal of both financing and providing orderly elections, the fact that there exist alternatives which courts, judges or individuals may feel are better suited to that end does not invalidate the choice made by the Legislature. The inquiry of the courts goes only to whether the means chosen is reasonably related to the purpose to be accomplished. As long as the poor man had a "free," alternative route to the ballot (Jenness), his equal protection rights have not been violated by the loss of the right to get on a particular party's primary ballot.

For the reasons stated herein the judgment of the Court below holding Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code unconstitutional should be reversed and judgment here rendered sustaining the validity of such statutory enactments and dissolving the injunction entered against the Appellants.

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## CERTIFICATE OF SERVICE

I, Pat Bailey, one of the attorneys for the Appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26 day of July, 1971, I served a copy of the foregoing Jurisdictional Statement on the Appellees by depositing a copy in the United States mail, postage prepaid, and addressed to the attorneys of record for Appellees as follows: Mr. H. Averill Sweitzer, 5th Floor, Manor House, Dallas, Texas 75202; Mr. A. L. Crouch, 109 Taylor, Fort Worth, Texas 76102; Mr. John L. Fashing, 608 Southwest National Bank Building, El Paso, Texas 79901; Mr. Fred Weldon and Mr. Stuart R. Abelson, 119 N. Stanton Street, Room 215, El Paso, Texas 79901.

Pat Bailey

PAT BAILEY

## EXHIBIT "A"

H.B. No. 5

AN ACT

enacting temporary provisions relating to the method of conducting and financing primary elections and to the fees, assessments, and deposits levied against candidates; amending the Texas Election Code as follows: amending Section 185a, as amended (Article 13.07a, Vernon's Texas Election Code) by adding Subsection (3); amending Subsection (1), Section 186, as amended (Article 13.08); amending Section 186, as amended (Article 13.08), by adding Subsections (5), (6), and (7); adding Section 186c; repealing Section 186a, as amended (Article 13.08a), Section 186a-1 (Article 13.08a-1), and Section 194, as amended (Article 13.16); providing penalties; making the Act effective only upon the occurrence of certain conditions and fixing the expiration date if the Act becomes effective; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 185a, Texas Election Code, as amended (Article 13.07a, Vernon's Texas Election Code), is amended by adding Subsection (3), to read as follows:

"(3) If a candidate is unable to pay the deposit or filing fee as required by Subsection (1) of this Section, in lieu of payment he may file with his application a petition of voters, as provided in Section 186c of this code, and he shall not then be required to pay any deposit, fee, or assessment as a condition for having his name printed on the ballot for either the primary election or the general election; when filing such petition, it shall be accompanied by the following affidavit:

" 'I am not financially able to pay the filing fee required to file for the office set forth in the attached application. In lieu therefor I submit the following petition signed by 10% of the number of votes cast for the ---------- (Democratic, Republican, etc.) Party's candidate for Governor in the last preceding General Election in the territory in which I am running.' "

Sec. 2. Subsection (1), Section 186, Texas Election Code, as amended (Article 13.08, Vernon's Texas Election Code), is amended to read as follows:

"(1) On or before the second Monday in February preceding each general primary election, the county committee shall carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks, and all other necessary expenses of holding the general primary and second primary in such county. On the second Monday in February, the committee shall meet and apportion such cost in such manner as in their judgment is just and equitable among the various candidates for nomination for district, county, and precinct offices who did not file with their application a supporting petition of voters as provided in Section 186c of this code, except the offices of Justice of the Court of Civil Appeals and member of the State Board of Education. Where a district office covers more than one county, the assessment of such candidate by the county shall be not more than a sum which is the quotient of the amount which he would be assessed if he represented only one county determined by the formula used to assess county candidates, when divided by the number of counties in his district. In

making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made. The committee may not assess any candidate an amount in excess of four percent of the total compensation payable for the particular term of office (full or partial) which he is seeking. Within 24 hours after adjournment of the meeting, the chairman shall mail to each person against whom an assessment is made a notice stating the amount of the expenses apportioned to him and informing him that on or before the fourth Monday in February he must pay to the chairman the difference between the amount apportioned to him and the amount of the deposit which accompanied the application which he filed with the chairman. No such person's name shall be placed on the ballot unless he complies with these requirements within the prescribed time. The notices shall be sent to the candidates by registered or certified mail, and the chairman shall obtain a receipt for each letter, postmarked by the post office at which the letter is mailed, as evidence of the mailing, and shall preserve the receipts for a period of three months."

Sec. 3. Section 186, Texas Election Code, as amended (Article 13.08, Vernon's Texas Election Code), is amended by adding Subsections (5), (6), and (7), to read as follows:

"(5) Notwithstanding any other provision of this section, an assessment shall not be made against a candidate who has filed with his application a petition of voters as provided in Section 186c of this code.

"(6) In conducting the primary elections, the committee is authorized to utilize volunteer unpaid services of election judges and clerks, to accept gratuities of other services and other things of value, and to use

funds derived from contributions, fund-raising events, and other lawful sources by way of supplementing the funds derived from assessments levied under this section.

"(7) If, after the committee has made the assessments authorized by Subsection (1) of this section, a court of competent jurisdiction declares the assessments to be invalid, the committee may reassess the candidates in an effort to bring the amounts within the court's delineation of permissible limits. In the event of a reassessment, the committee shall fix the date by which the new assessments must be paid, which date shall be at least 10 days after the date of the meeting at which the reassessment is made. Within 24 hours after adjournment of the meeting, the chairman shall give notice, in the manner required for notice of the original assessment, to each candidate who has not paid the original assessment. Within 30 days after the date of the meeting, the county chairman shall refund to each candidate who paid the original assessment the difference between the amount of the original assessment and the new assessment."

Sec. 4. The Texas Election Code is amended by adding Section 186c, to read as follows:

"186c. Petition of voters in lieu of payment of assessment or fee

"(a) Notwithstanding any provision in Section 185a, Section 186, Section 190, Section 190a, Section 193, or any other section of this code, a candidate for any public office who files with his application for a place on the ballot in the general primary election a petition which complies with this section is not required to pay the deposit, assessment, or fee required by any other section of this code. The petition must

accompany the application and be filed at the same time that the application is filed. Where a candidate for a district office is required to file an application with more than one county chairman, he shall file the petition with the county chairman in the county of his residence and shall attach to the petition the name and address of each other county chairman with whom an application is filed. He shall attach to the application which is filed with each other chairman a statement that the petition has been filed, giving the name and address of the chairman with whom it is filed. The chairman with whom the petition is filed shall certify to each other county chairman in the district whether the petition complies with the requirements of this section. Where the filing deadline for the office is on or before the fourth Monday in February, the chairman shall make the certification not later than the second Monday in March. Where the filing deadline is after the fourth Monday in February, he shall make the certification within 15 days after the deadline or by the 25th day before the general primary, whichever is earlier.

"(b) A petition which is filed in lieu of the payments required by other sections of this code must be signed by qualified voters eligible to vote for the office for which the candidate is running, equal in number to at least 10 percent of the entire vote cast for that party's candidate for governor in the last preceding general election in the territory (state, district, county, or precinct, as the case may be) in which the candidate is running. Where a candidate is running in a district or precinct which has been created or the boundaries of which have been changed since the last general election, he may request the secretary of state in the case of a district office, and the county judge of the county

in which the precinct is situated in the case of a precinct office, to make an estimate in advance of the filing deadline of the number of votes cast for that party's candidate for governor within that territory at the last general election, and upon receiving such a request the officer shall make the estimate and notify the candidate and each chairman with whom the candidate files an application. The estimate shall be used as the official basis for computing the number of signatures required on the petition. If an advance estimate is not requested, the chairman with whom the petition is filed shall make the estimate before he acts on the sufficiency of the petition. In every instance, the candidate may challenge the accuracy of the estimate, and if he is dissatisfied with the final decision of the officer he may appeal the decision to any district court in the territory involved. The decision of the district court is final.

"(c) The application of a candidate who files a petition under this section must be executed by the candidate personally, and the provision in Section 190 which permits the filing of an application signed by 25 qualified voters is not available to a candidate who files a petition under this section.

"(d) The petition shall show in bold print on each page the following: 'PETITION IN LIEU OF FILING FEE TO PLACE THE NAME OF_____ _____ON THE PRIMARY BALLOT OF _____PARTY FOR THE OFFICE OF _____. PLEASE READ ALL TERMS CAREFULLY,' and the following information with respect to each person signing it: his address, the number of his voter registration certificate for the voting year in which the election is held and also the county of issuance if different from the county in which he resides at the time of signing, and the date of signing.

"(e) No petition may contain the name of more than one candidate. No person may sign the petition of more than one candidate for the same office, and if any person signs the application of more than one candidate for the same office, the signature is void as to all such petitions. However, a person may withdraw and annul his signature by delivering to the candidate and to the chairman with whom the petition is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered not later than five days before the last day for filing the petition. Upon such withdrawal, the person is free to sign the petition of another candidate for the same office in the same party's primary, but the withdrawal does not have the effect of relieving the candidate of his ineligibility to affiliate with some other political party during the voting year in which the election is held. The candidate from whose petition a signature is withdrawn may file additional signatures to replace the withdrawn signature at any time before the filing deadline, but signatures filed after the date of the candidate's application which may be counted toward the required number shall not exceed the number of withdrawn signatures.

"(f) To each person who signs a petition there shall be adminstered the following oath, which shall be reduced to writing and made a part of each page of the petition: 'I know the contents of this petition. I am a qualified voter eligible to vote in the forthcoming primary election of the _____ Party for the office for which _____ is a candidate. I have not signed the petition of any other candidate for this office or I have withdrawn my signature for any other candidate in the manner provided by law, and I have

not signed the petition of a candidate who is running for any office in the primary of any other party. I understand that by signing this petition I became ineligible to affiliate with any other party or to participate in the primary elections, conventions, or other party affairs of any other party during the voting year in which this election is held.'

"(g) After a person has signed the petition of a candidate, the person's signature is void as to the petition of any candidate who is running in the primary election of any other party. He also becomes ineligible to affiliate with any other party during the voting year in which the election is held. If he participates or attempts to participate in the primary election or convention of any other party during that voting year, he is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $1,000.

"(h) A petition may not be circulated for signatures earlier than 90 days preceding the deadline for filing the petition. Any signature obtained on or before the 91st day preceding the deadline is void. The officer who administers the oath required by Subsection (f) of this section shall verify that the correct date of signing is shown on the petition.

"(i) The secretary of state shall prescribe a form for the petition. However, a candidate may use any other form which complies with the requirements of this section."

Sec. 5. The following sections of the Texas Election Code are repealed: Section 186a, as amended (Article 13.08a, Vernon's Texas Election Code), Section 186a-1 (Article 13.08a-1), and Section 194, as amended (Article 13.16).

Sec. 6. If any provision of this Act or the applica-

tion thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 7. (a) This Act is enacted as a contingent, temporary law, to become effective only as stated in Subsection (b) of this section; and if it does become effective, it expires on December 31, 1972.

(b) This Act becomes effective only upon the condition that, before January 1, 1972:

(1) the Supreme Court of the United States does not dispose of the appeal filed in that court from the judgment of the United States District Court for the Northern District of Texas, Dallas Division, in Civil Action No. CA 3-3635-C, styled Van Phillip Carter vs. Martin Dies, Jr., et al., by action which becomes final before January 1, 1972; or

(2) the Supreme Court of the United States affirms or refuses to review the judgment of the district court in the aforesaid case, or by other action taken upon an appeal of that case the Supreme Court rules that either of the following sections of the Texas Election Code as they exist before the amendments made by this Act violates the Constitution of the United States: Sections 185a, 186, 186a, 193, and 194.

(c) Not later than January 5, 1972, the Attorney General of Texas shall certify to the Governor and to the Secretary of State whether either of the two conditions stated in Subsection (b) has been fulfilled, and the Governor immediately shall issue his proclamation declaring whether this Act becomes effective. If either

of the conditions for effectiveness is fulfilled, the Act takes effect on the date of the Governor's proclamation.

(d) If this Act takes effect, upon its expiration on December 31, 1972, the law as it existed before the effective date of the Act again becomes operative until otherwise provided by the Legislature.

Sec. 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

---
Speaker of the House

---
Lieutenant Governor
President of the Senate

I hereby certify that H.B. No. 5 was passed by the House on June 4, 1971, by the following vote: Yeas 110, Nays 23.

---
Chief Clerk of the House

I hereby certify that H.B. No. 5 was passed by the Senate on June 4, 1971, by a viva voce vote.

---
Secretary of the Senate

APPROVED: ---
Date

---
Governor

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ~~1606~~ 70-128

MARTIN DIES, JR., ET AL., *Appellants*

*v.*

VAN PHILLIP CARTER, ET AL., *Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

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## SUBJECT INDEX


| | Page |
|---|---|
| OPINIONS BELOW | 1 |
| JURISDICTION | 1 |
| QUESTIONS PRESENTED | 2 |
| STATUTES INVOLVED | 2 |
| STATEMENT | 2 |
| SUMMARY OF ARGUMENT | 4 |
| ARGUMENT | 5 |
| I. The Filing Fee is Unbridled Confiscation | 5 |
| II. The Filing Fee is a Prior Restraint on Expression | 8 |
| III. There Is No Justification for the Filing Fee | 14 |
| IV. The Filing Fee Makes Affluence an Electoral Standard | 20 |
| A. The $50 Poll Tax | 20 |
| B. The $6,300 Party Assessment | 24 |
| CONCLUSION | 32 |
| CERTIFICATE OF SERVICE | 34 |

## SUPPLEMENTARY MATERIAL INDEX

Page

EXHIBIT "A" ..... 36
The Texas Filing Fee Statutes

EXHIBIT "B" ..... 39
Analysis of Certain Filing Fee Schedules

TABLE I ..... 42
Filing Fees Paid by Candidates in 1970 Tarrant County, Democratic Primaries

TABLE II ..... 43
Tarrant County Democratic Primary Filing Fees for 8 Local Offices, 1948-1970, with 1950 and 1956 not Available*

TABLE III ..... 44
Filing Fees Paid by Candidates for 8 Local Offices in 10 Counties in 1970 Texas Democratic Primaries

TABLE IV ..... 45
Income of Persons 14 Years of Age and Over, by Race and Sex, for the State of Texas and the Fort Worth Metropolitan Area

TABLE V ..... 46
1970 Filing Fees for County Judge in 50 Texas Counties

## INDEX OF AUTHORITIES

*Cases:* Page

Anderson v. Martin, 375 U.S. 399 ..... 28

Baggett v. Bullitt, 377 U.S. 360 ..... 9
Baker v. City of St. Petersburg, 5 Cir., 440 F. 2d 294 ..... 28
Bantam Books, Inc. v. Sullivan, 372 U.S. 58 ..... 9
Beare v. Smith, 39 L.W. 2388 ..... 14
Bell v. Burson, 29 L. Ed. 2d 90 ..... 7
Boddie v. Connecticut, 39 L.W. 4294 ..... 17, 23, 24
Bottle v. Mulholland, 5 Cir., 439 F. 2d 321 ..... 15
Breedlove v. Suttles, 302 U.S. 277 ..... 22
Briscoe v. Kusper, 1970, 435 F. 2d 1046, 39 L.W. 2386 ..... 7
Burroughs & Knight v. Lyles, 142 Tex. 704, 181 S.W. 2d 570 ..... 18

Campbell v. Davenport, 5 Cir., 362 F. 2d 624 ..... 15
Cantwell v. Connecticut, 310 U.S. 296 ..... 7, 12
Carrington v. Rash, 380 U. S. 39 ..... 8
Carroll v. Princess Anne, 393 U.S. 175 ..... 9
Carter v. Dies, 321 F. Supp. 1358 ..... 1
Century Arms, Inc. v. Kennedy, 323 F. Supp. 1002 ..... 21
Cipriano v. City of Houma, 395 U.S. 701, 23 L. Ed. 2d 647 ..... 30
City of Phoenix v. Kolodziejski, 26 L.Ed. 2d 523 ..... 30
Cox v. Louisiana, 379 U.S. 536 ..... 10

Dickson v. Strickland, 265 S.W. 1012 ..... 18

Edwards v. California, 314 U.S. 160 ..... 17, 31
Eisner v. Stamford Board of Education, 2 Cir., 440 F. 2d 303 ..... 15
Elfbrandt v. Russell, 384 U.S. 11, 18 ..... 9, 12

Follett v. McCormick, 321 U.S. 573, 579 ..... 8
Frost & Frost Trucking Co. v. Railroad Commission of California, 271 U.S. 583 ..... 17
Garza v. Smith, 320 F. Supp. 131 ..... 14
Gibson v. Florida Legislative Committee, 372 U.S. 539 ..... 9, 29
Graham Purcell v. Jim Lindsey, 158 Tex. 541, 314 S.W. 2d 283 ..... 18
Gray v. Sanders, 372 U.S. 368 ..... 28
Griffin v. Illinois, 351 U.S. 12 ..... 17, 24

INDEX OF AUTHORITIES (Continued)

*Cases:* Page

Grosjean v. American Press Co., 297 U.S. 233 ..... 16
Grovey v. Townsend, 295 U.S. 45 ..... 29

Hagar v. Reclamation District, 111 U.S. 701 ..... 16
Hague v. C. I. O., 307 U.S. 496 ..... 10
Hanover v. Northrup, DC Conn., 325 F. Supp. 170 ..... 10
Harman v. Forssenius, 380 U.S. 528 ..... 17
Harper v. Virginia State Board of Elections,
383 U.S. 663 ..... 8, 16, 22, 31
Hiett v. U.S., 5 Cir., 415 F. 2d 664, cert. denied,
397 U.S. 936 ..... 12
Holzschuher v. Wurzbach, 286 S.W. 289 ..... 5

Irwin v. Gavit, 286 U.S. 161 ..... 19

Jackson v. Ogilvie, 1971, 325 F. Supp. 864, 39 L.W. 2456 ..... 10
Jenness v. Little, 306 F. Supp. 925 ..... 8, 16, 25
Johnson v. Hood, 430 F. 2d 610 ..... 13

Kent v. Dulles, 257 U.S. 116 ..... 6
Kramer v. Union Free School District, 395 U.S. 621,
23 L. Ed. 2d 583 ..... 8, 19, 30

Lane County v. Oregon, 74 U.S. 71 ..... 16
Louisiana v. N.A.A.C.P., 366 U.S. 293 ..... 12
Lovell v. City of Griffin, 303 U.S. 444 ..... 10, 17

Mandell v. Mitchell, 325 F. Supp. 797 ..... 10
Martin v. City of Struthers, 319 U.S. 141 ..... 10
Meltzer v. LeCraw & Co., 39 L. W. 3483 ..... 25
Murdock v. Pennsylvania, 319 U.S. 105 ..... 16

N.A.A.C.P. v. Alabama, 357 U.S. 449 ..... 12
N.A.A.C.P. v. Button, 371 U.S. 415 ..... 12, 16
New Left Educational Project v. Board of Regents
of University of Texas, 326 F. Supp. 158 ..... 13
New York v. United States, 342 U.S. 882, 884 ..... 8
New York Times v. United States, 39 L. W. 4879 ..... 9
Nixon v. Condon, 286 U.S. 73 ..... 29
Nixon v. Herndon, 273 U.S. 536 ..... 29

Organization for a Better Austin v. Keefe, 29 L. Ed 2d 1 ..... 8, 9

## INDEX OF AUTHORITIES (Continued)

*Cases:* Page

Panama Refining Co. v. Bryan, 393 U.S. 388 ..... 6
Pennington v. Coxe, 2 Cranch (6 U.S.) 34 ..... 18
People v. Board, 44 N.E. 321 ..... 24

Reynolds v. Sims, 377 U.S. 533 ..... 8

Schneider v. United States, 308 U.S. 147 ..... 9, 12
Shapiro v. Thompson, 394 U.S. 618 ..... 17, 20, 23
Shelton v. Tucker, 364 U.S. 479 ..... 10, 12
Shuttlesworth v. Birmingham, 394 U.S. 147 ..... 7
Smith v. Allwright, 321 U.S. 649 ..... 29
Spillers v. Slaughter, 325 F. Supp. 550 ..... 25
State v. Court of Civil Appeals, 123 Tex. 549
75 S.W. 2d 253 ..... 18
Stapleton v. Clerk, 311 F. Supp. 1187 ..... 8, 16
Staub v. City of Baxley, 355 U.S. 313 ..... 7
Stensoff v. State, 80 Tex. 428, 15 S.W. 1100 ..... 18
Stromberg v. California, 283 U.S. 359 ..... 10
Sweezy v. New Hampshire, 354 U.S. 234 ..... 12

Talley v. California, 362 U.S. 60 ..... 12
Tate v. Short, 39 L. W. 4301 ..... 17
Taylor v. Beckham, 178 U.S. 548 ..... 16
Terry v. Adams, 345 U.S. 461 ..... 29
Thomas v. Collins, 323 U.S. 516 ..... 9
Thomas v. Mims, 317 F. Supp. 179, 39 L. W. 2165 ..... 8, 16
Turner v. Fouche, 396 U.S. 346, 24 L. Ed. 2d 567 ..... 30

U. S. Servicemen's Fund v. Shands, 4 Cir., 440 F. 2d 44 ..... 15
United States v. Great Northern Railway, 287 U.S. 144 ..... 19
United States v. Jackson, 390 U.S. 570 ..... 20
United States v. Texas, 252 F. Supp. 234, 384
U.S. 155 ..... 14, 16, 17, 20, 22

Vaughn v. Bower, 313 F. Supp. 37, affirmed
39 L. W. 3199 ..... 17

Waples, et al. v. Marrast, 108 Tex. 5, 184 S.W. 180 ..... 17, 18, 19
Wesberry v. Sanders, 376 U.S. 1 ..... 8
Williams v. Rhodes, 393 U.S. 23 ..... 8, 16
Yick Wo v. Hopkins, 118 U.S. 356 ..... 5

Zemel v. Rusk, 381 U.S. 1 ..... 6

## INDEX OF AUTHORITIES (Continued)

Page

*Constitution of Texas:*

Article V, Section 15 ..... 18
Article VI, Section 4 ..... 13, 14
Article XVI, Section 2 ..... 13, 14

*Texas Election Code:*

Article 13.07a ..... 2, 20
Article 13.08 ..... 2, 7
Article 13.08a ..... 2, 7
Article 13.15 ..... 2
Article 13.16 ..... 2

*United States Statutes:*

Voting Rights Act of 1965 ..... 21

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1606

MARTIN DIES, JR., ET AL., *Appellants*

*v.*

VAN PHILLIP CARTER, ET AL., *Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

## Appellees' Brief

### OPINIONS BELOW

The opinions of the Three Judge Court are reported at 321 F. Supp. 1358, under the style of *Carter v. Dies.*

The Three Judge Court ruled that a filing fee violates the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get his name on the ballot.

### JURISDICTION

The appellate jurisdiction of the Supreme Court has been properly invoked, and probable jurisdiction was noted on June 7, 1971.

## QUESTIONS PRESENTED

There are two questions presented by the appeal:

1. Whether or not a filing fee can be used as a revenue collecting device to finance party primaries.

2. Whether or not a filing fee can be used as a regulatory device to restrict access to the ballot to "serious" candidates.

## STATUTES INVOLVED

Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16 of the *Texas Election Code* were declared unconstitutional by the Three Judge Court.

A concise summary of the many Texas filing fee statutes is filed herewith, as Exhibit "A", to illustrate what a broad net is cast over the associational activities of candidates and voters alike by these filing fees.

## STATEMENT

On December 15, 1969, Theodore H. Wischkaemper, a candidate for County Judge, filed suit in Fort Worth, Texas, challenging the validity of the $50 deposit and a party assessment of $6,300, computed at 32% of the annual salary of the office.

On January 14, 1970, William Pate, a candidate for County Commissioner, filed suit in El Paso, Texas, attacking the $50 deposit and a party assessment of $1,424.60, computed at 17% of the annual salary of the office.

On February 6, 1970, Van Phillip Carter, a candi-

date for Commissioner of Public Lands, filed suit in Dallas, Texas, attacking the $1,000 statutory filing fee for statewide office.

On March 16, 1970, a joint motion for consolidation of the three separate lawsuits was filed; and on March 25, 1970, a three-judge panel was named to hear the consolidated lawsuit.

On April 3, 1970, the three-judge court, after a preliminary hearing, ordered the names of Theodore Wischkaemper and William Pate on the ballot without filing fees, but relief was denied to Van Phillip Carter for reasons unrelated to filing fees.

On October 9, 1970, the three-judge court heard the consolidated lawsuit on the merits and on December 21, 1970, entered the opinions which are the subject of this appeal.

Two Exhibits and five Tables, containing supplementary information which may prove helpful to an understanding of the Texas filing fee, are filed herewith, at page 36 through page 46. The titles of these Exhibits and Tables are listed in the Supplementary Material Index, page ii.

## SUMMARY OF ARGUMENT

The fourfold argument against filing fees and party assessments which comprises the main body of this Brief may be summarized as follows:

1. The filing fee statutes are invalid because they authorize the political party to make party assessments without notice, hearing or appeal and without limitation.

2. The filing fee statutes are invalid because they subject First Amendment rights to the prior restraint of a license without narrow, objective, and definite standards.

3. The filing fee cannot be justified as a regulatory measure because the *Texas Election Code* does not expressly say that the tax may be used for any purpose other than revenue, and it is well settled that a State may not charge for the enjoyment of a right granted by the Federal Constitution.

4. The filing fee works an invidious discrimination because exercise of the fundamental right to seek elective office is conditioned upon economic status, and payment of the tax has no relation to the constitutional qualifications for office.

## ARGUMENT

### I.

### The Filing Fee is Unbridled Confiscation

The San Antonio Court of Civil Appeals, in construing the Texas filing fee statutes in 1926, concluded that they gave the county executive committee of the political party "unbridled license to confiscate the property of candidates."

Chief Justice Fly, speaking for the court, in the case of *Holzschuher v. Wurzbach*, 286 S.W. 289, went on to say: "The extraordinary, almost arbitrary power placed in the hands of county executive committees to levy tribute on every candidate . . . could be exercised in such a way as to take in advance every dollar that would be realized from the salary pertaining to the office. That is clearly exemplified in this case where a county executive committee has required of a citizen desiring to seek the nomination of his party for a seat in the house of representatives of Congress, the payment of three-fourths of the salary attached to the office for one year. This for Bexar County alone, and there are ten other counties in the district with the same authority as the executive committee in Bexar County, which if exercised in the same extravagant way as has been attempted by Bexar County, would seize every dollar of salary attached to the term of two years."

It would be difficult to imagine any greater act of invidious discrimination than the "unbridled confiscation" attempted in the *Holzschuher* case.

As Mr. Justice Matthews said, in *Yick Wo v. Hopkins*, 118 U.S. 356: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Incredibly enough, the Texas Legislature, even after *Holzschuher*, has done little to keep the power of the political party to levy tribute on candidates within reasonable bounds. The party assessments in the 1970 Democratic Primary Election in Tarrant County, Texas, were made on the basis of 32% of the annual salary of the office, with some assessments reaching the astronomical figure of $8,900.00! See Table I, page 42, for a complete schedule of these invidious assessments, which reasonable minds might designate "unbridled confiscation."

While general grants of power to administrative agencies are permissible to regulate some activities, other types of activities, such as personal liberties, can be regulated only pursuant to the lawmaking functions of a legislature. If that power is delegated, then there must be acceptable standards included within that delegation so that the agency can follow the policy of the statute. See *Zemel v. Rusk*, 381 U.S. 1; *Kent v. Dulles*, 357 U.S. 116.

In other words, the legislature must determine the policy of the law, and this function cannot be delegated. *Panama Refining Co. v. Ryan*, 393 U.S. 388.

The legislature can, however, authorize administrative officials to prescribe rules and regulations to implement the legislative enactments. This delegation should be specific to prevent intervention into protected activities of individuals. See *Cantwell v. Connecticut*, 310 U.S. 296.

For a law subjecting First Amendment rights to the prior restraint of a license, without narrow, objective, and definite standards is unconstitutional. *Shuttlesworth v. Birmingham*, 394 U.S. 147.

Article 13.08, *Texas Election Code*, authorizing party assessments, is unconstitutional on its face, because there is no statutory provision for notice, hearing, or appeal, an invidious *in camera* procedure similar to the one condemned by *Briscoe v. Kusper*, 7 Cir., 435 F. 2d 1046, 39 L. W. 2386. See also, *Staub v. Baxley*, 355 U.S. 313; and *Bell v. Burson*, 29 L. Ed. 2d 90.

Article 13.08a, *Texas Election Code*, provides for a ceiling on party assessments of 10% of the aggregate annual salary for two-year offices (there is only one, U. S. Representative) and 15% of the aggregate annual salary for four-year offices, for counties with a population in excess of one million; but only two counties in the State fall within the ambit of this limitation, and the political parties in the other 252 counties apparently still have "unbridled license" to "levy tribute" on candidates for public office, without statutory limitation.

It has been held that absolute discretion, like cor-

ruption, marks the beginning of the end of liberty. *New York v. United States*, 342 U.S. 882, 884.

And it is wise to remember that the taxing and licensing power is a dangerous and potent weapon which, in the hands of unscrupulous men, could be used to suppress freedoms and destroy religion unless it is kept within appropriate bounds. *Follett v. McCormick*, 321 U.S. 573, 579.

## II.

### The Filing Fee Is a Prior Restraint on Expression

The right to vote is a fundamental right that preserves all other rights, deserving of the most careful protection, and to be limited only for compelling state interests. *Kramer v. Union Free School Dist.*, 395 U.S. 621, 23 L. Ed. 2d 583; *Williams v. Rhodes*, 393 U.S. 23, 30-31; *Harper v. Virginia Board of Elections*, 383 U.S. 663; *Carrington v. Rash*, 380 U.S. 39; *Reynolds v. Sims*, 377 U.S. 533; *Wesberry v. Sanders*, 376 U.S. 1.

The right to seek office, as well as the right to vote, is a fundamental constitutional right. *Jenness v. Little*, 306 F. Supp. 925, appeal dismissed, 90 S. Ct. 820; *Thomas v. Mims*, 317 F. Supp. 179, 39 L. W. 2165; and *Stapleton v. Clerk*, 311 F. Supp. 1187.

Where voting rights are involved any restrictions must be carefully scrutinized. *Reynolds v. Sims, supra*, 377 U.S. 533, 553; *Wesberry v. Sanders, supra*, 376 U.S. 1; *Harper v. Virginia Board of Elections, supra*, 383 U.S. 663.

The statutory requirement of the payment of a filing fee by a candidate as a precondition to access to the ballot is, in effect, a prior restraint on the First Amendment rights of expression—speech, publication and assembly—for, it is a matter of common knowledge that candidates like to orate, distribute handbills and hold political rallies.

And, as Chief Justice Burger recently said, in *Organization For a Better Austin v. Keefe*, 29 L. Ed. 2d 1, 5: "Any prior restraint on expression comes to this court with a 'heavy presumption' against its validity." See also, *Carroll v. Princess Anne*, 393 U.S. 175, 181; and *Bantam Books, Inc., v. Sullivan*, 372 U.S. 58, 70; *New York Times v. United States*, 39 L. W. 4879.

This restriction threatens the cherished freedom of association protected by the First Amendment, made applicable to the States through the Fourteenth Amendment, *Elfbrandt v. Russell*, 384 U.S. 11, 18; *Baggett v. Bullitt*, 377 U.S. 360; *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460; *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 543-546.

No one may be required to obtain a license in order to speak. *Thomas v. Collins*, 323 U.S. 516, 543-544. Nor may a license be required as a precondition for the peaceable distribution of books, pamphlets, and handbills. *Schneider v. United States*, 308 U.S. 147. This court has often recognized that the activity of peaceful pamphleteering is a form of communication protected by the First Amendment. *Organization for a Better Austin v. Keefe, supra*, 29 L. Ed. 2d 1;

*Martin v. City of Struthers*, 319 U.S. 141; *Lovell v. Griffin*, 303 U.S. 444.

A permit may not be required as a precondition for an assembly in the streets, parks, or public buildings. *Hague v. C.I.O.*, 307 U.S. 496.

The right of free association is closely allied to freedom of speech, and, like free speech, lies at the foundation of a free society. *Shelton v. Tucker*, 364 U.S. 479.

The First Amendment guarantees to the people as sovereign, as the retained attribute of their ultimate sovereignty, their right, in open and wide-ranging debate, publication, and assembly to review the government they have created, the adequacy of its functioning, and the presence or absence of a need to alter and replace it. *Mandell v. Mitchell*, 325 F. Supp. 797.

Maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy. *Stromberg v. California*, 283 U.S. 359, 369; and *Cox v. Louisiana*, 379 U.S. 536.

First Amendment rights of expression are fundamental to the preservation of an open, democratic society, since restriction on their exercise inhibits the debate by which society's values are set and its laws reformed to reflect prevailing opinions. *Hanover v. Northrup*, DC Conn., 325 F. Supp. 170.

Before a state can in any way regulate the First Amendment right to freedom of association, which is a concomitant of the fundamental right to vote, it must be shown that compelling state interest justifies

such regulation, and such regulation must be narrowly and fairly drawn. *Jackson v. Ogilvie, Gov. of Ill.*, DC Ill., 325 F. Supp. 864.

Recent federal cases have upheld the following campaign type activities as protected by the First Amendment: criticism of public officials and comment on matters of public interest;[1] canvassing, poster hanging and poll watching;[2] speechmaking, leafletting and distribution of underground newspaper;[3] political advertising;[4] sample ballots;[5] associational activities, petitions and litigation;[6] theatrical performances;[7] parades;[8] and even nonverbal expression,[9] armbands,[10] and silence.[11]

On the other hand, a candidate for Congress was recently allowed to enjoin county commissioners from giving their employees election day off to campaign for his opponent.[12] And an injunction was also recently granted to prevent a "substantial, perhaps massive, political effort in favor of the ins and against the outs" in Cook County, Illinois.[13]

While it is often said that First Amendment rights are not absolute, and that conduct incidental to the

[1] *Flynn v. Giarusso*, 321 F. Supp. 1295.
[2] *Shakman v. Demo. Organ. of Cook County*, DC Ill., 310 F. Supp. 1398.
[3] *Gall v. Lawler*, 322 F. Supp. 1223.
[4] *Radical Lawyers Caucus v. Pool*, 324 F. Supp. 268.
[5] *Gilmore v. Greene Co. Demo. Party Ex. Comm.*, 435 F. 2d 487.
[6] *McQueen v. Druker*, 1 Cir., 438 F. 2d 781.
[7] *Larue v. California*, 326 F. Supp. 348.
[8] *Abernathy v. Conroy*, 4 Cir., 429 F. 2d 1170.
[9] *Sutherland v. DeWulf*, 323 F. Supp. 740.
[10] *Hill v. Lewis*, 323 F. Supp. 55.
[11] *Hanover v. Northrup, supra*, DC Conn., 325 F. Supp. 170.
[12] *White v. Snear*, 313 F. Supp. 1100.
[13] *Shakman v. Cook Co. Demo. Organ., supra*, 7 Cir., 39 L. W. 2263.

exercise of speech in public places is subject to reasonable nondiscriminatory regulation governing time, manner, and place, *Cantwell v. Connecticut, supra*, 310 U.S. 296, once it is determined that state action impinges on First Amendment rights, which determination has already been made in this case by a three-judge court, then the burden of proof is on the state to show that the governmental interests asserted to support the impingement are "compelling." *N.A.A.C.P. v. Alabama, supra*, 357 U.S. 449; *Sweezy v. New Hampshire*, 354 U.S. 234 (Frankfurter, concurring).

Absent such showing, any "time," "manner," or "place" regulation is unreasonable. For a statute touching these protected rights must be "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State." *Cantwell v. Connecticut, supra*, 310 U.S. 296, 311.

Legitimate legislative goals "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker, supra*, 364 U.S. 479, 488. And see *Louisiana v. N.A.A.C.P.*, 366 U.S. 293, 296-297; *N.A.A.C.P. v. Button*, 371 U.S. 415, 432-433; *Elfbrandt v. Russell, supra*, 384 U.S. 11, 18.

This "less restrictive means" principle is especially applicable to regulations that impinge on First Amendment speech and associational rights, even when accompanied by conduct. *Talley v. California*, 362 U.S. 60; *Schneider v. United States, supra*, 308 U.S. 147; see *Hiett v. U. S., 5 Cir.*, 415 F. 2d 664,

cert. denied, 397 U.S. 936.

Thus, while the Texas Legislature can certainly provide "orderly honest elections . . . [by] measures reasonably calculated to that end," *Johnson v. Hood*, 430 F. 2d 610, such as "regulations . . . necessary to detect and punish fraud," per Article VI, Section 4, of the State Constitution (*Jurisdictional Statement*, pp. 11-12), or "prohibiting under adequate penalties all undue influence . . . from power, bribery, tumult or other improper practice," per Article XVI, Section 2, (*Appellants' Brief*, p. 3), this must be done in a manner that strikes at the very fraud or undue influence to be detected and punished.

Surprisingly enough, the State of Texas would have us believe that a head tax on political candidates is authorized by a constitutional mandate to provide criminal sanctions, i.e., punishments and penalties, to guarantee orderly honest elections, which is an indirect way of saying that only the affluent are honest and law abiding, and all others should be excluded from the ballot.

In broadly limiting the speech and associational rights of candidates and voters alike, through the imposition of arbitrary, excessive and oppressive filing fees, the Texas Legislature has simply failed to speak with "that small calibre precision required of regulations touching First Amendment rights." *New Left Educational Project v. Board of Regents of University of Texas*, 326 F. Supp. 158.

The State of Texas cannot justify the deposit and party assessment on the theory that they are "neces-

sary" for revenue and regulation purposes, for both of these ends can be "more narrowly achieved" without "broadly stifling" fundamental personal liberties.

## III.

### There Is No Justification for the Filing Fee

In the *Jurisdictional Statement*, filed in April, the State of Texas attempted, at pages 11 and 12, to justify the filing fee as a regulation authorized by Article VI, Section 4, of the Texas Constitution, "to detect and punish fraud and preserve the purity of the ballot box."

However, the Wischkaemper-Jenkins *Motion To Dismiss or Affirm*, filed in May, cited at pages 11 and 12, three recent three-judge Texas cases rejecting this provision as justifying voter restrictions: *United States v. Texas*, 252 F. Supp. 234, 384 U. S. 155, invalidating the poll tax; *Beare v. Smith*, 39 L. W. 2388, striking down annual voter registration; and *Garza v. Smith*, 320 F. Supp. 131, outlawing statutory prohibition against assisting voters with bodily infirmities.

The State of Texas has now abandoned the fraud theory of justification for the filing fee, as expressed in Article VI, Section 4, of the State Constitution (*Jurisdictional Statement*, pages 11 and 12) in favor of the undue influence theory set forth in Article XVI, Section 2, of the State Constitution (*Appellants' Brief*, page 3) which reads in its entirety as follows:

> Laws shall be made to exclude from office,

> serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult or other improper practice.

The State of Texas cannot seriously contend that the use of filing fees, to "exclude from office" those whose only crime is being poor, can prevent "perjury, forgery or other high crimes."

And not one scintilla of evidence is in the record to demonstrate that the use of filing fees prevents "undue influence . . . from power, bribery, tumult, or other improper influence."

"Speculative apprehension," *U. S. Servicemen's Fund v. Shands*, 4 Cir., 440 F. 2d 44, and "undifferentiated fear," *Bottle v. Mulholland*, 5 Cir., 439 F. 2d 321, are not enough to overcome First Amendment rights.

As the Court said in *Eisner v. Stamford Board of Education*, 2 Cir., 440 F. 2d 303, ". . . authorities must demonstrate reasonable basis for interference with . . . speech, and courts will not rest content with bare allegations that basis existed."

It is undisputed that the $50.00 deposit, as well as the $6,300.00 party assessment, computed at 32% of the annual salary of the office, is a tax. *Campbell v. Davenport*, 5 Cir., 362 F. 2d 624.

The discretion of the State Legislature as to taxation is restrained only by the will of the people as expressed in the State Constitution. *Lane County v. Oregon*, 74 U. S. 71.

And to any extent not prohibited by the Constitution of the United States. *Hagar v. Reclamation District*, 111 U. S. 701.

The doctrine of legislative absolutism is foreign to free government as it exists in this country. *Taylor v. Beckham*, 178 U. S. 548, 609.

As Mr. Justice Brennan said, in *N.A.A.C.P. v. Button*, *supra*, 371 U. S. 415, "The decisions of this court have consistently held that only a compelling state interest within the State's constitutional power to regulate can justify limiting First Amendment freedoms."

The State of Texas and the Democratic Party contend in this lawsuit that the challenged filing fees are valid under both the State and Federal constitutions for both revenue and regulation purposes.

The right to seek office, as well as the right to vote, is a fundamental constitutional right. *Jenness v. Little*, *supra*, 306 F. Supp. 925, appeal dismissed, 90 S. Ct. 820; *Thomas v. Mims*, *supra*, 317 F. Supp. 179, 39 L. W. 2165; and *Stapleton v. Clerk*, *supra*, 311 F. Supp. 1187.

A state may not impose a charge for the enjoyment of a right granted by the federal constitution. *Murdock v. Pennsylvania*, 319 U. S. 105, 113. See also: *Grosjean v. American Press Co.*, 297 U. S. 233; *Lovell*

*v. City of Griffin, supra,* 303 U. S. 444; *Frost & Frost Trucking Co. v. Railroad Commission* of California; 271 U. S. 583; *Harman v. Forssenius,* 380 U. S. 528, 540; *Harper v. Virginia State Board of Elections, supra,* 383 U. S. 663; *United States v. Texas, supra,* 252 F. Supp. 234, 384 U. S. 155.

The unreasonable exclusion of a candidate for public office, when other candidates are given places on the ballot, denies the voters who might wish to vote for the excluded candidate the equal protection of the laws. *Williams v. Rhodes, supra,* 393 U. S. 23.

The burden on the State treasury does not justify an enactment with an invalid purpose. *Edwards v. California,* 314 U. S. 160; *Griffin v. Illinois,* 351 U. S. 12; *Shapiro v. Thompson, supra,* 394 U. S. 618; and *Vaughn v. Bower,* 313 F. Supp. 37, affirmed 39 L. W. 3199. Especially where the statute is more effective in producing constitutional problems than revenue, *Tate v. Short,* 39 L. W. 4301, and alternatives are available, *Tate v. Short, supra,* 39 L. W. 4301; *United States v. Texas, supra,* 252 F. Supp. 234, 384 U. S. 155; *Boddie v. Connecticut,* 39 L. W. 4294.

In 1916, the Texas Supreme Court, construing the State Constitution, in the case of *Waples, et al. v. Marrast,* 108 Tex. 5, 184 S. W. 180, ruled that: "The payment of the expenses of primary elections of political parties is not a public purpose for which public revenues may be used."

It has been stipulated that although candidate Wischkaemper meets all the qualifications for the office of County Judge set forth in the Constitution

of Texas, Article V, Section 15 (*Appendix*, page 116), the Appellant County Chairman of the Democratic Party attempted, nevertheless, to require the payment of the statutory $50.00 deposit and $6,300 party assessment as a precondition to access to the ballot (*Appendix*, page 117) which the candidate was financially unable to pay. (*Appendix*, pages 117-118)

But in the case of *Burroughs & Knight v. Lyles*, 142 Tex. 704, 181 S. W. 2d 570; the Texas Supreme Court held: "The State Constitution . . ., having prescribed the qualifications, . . . it is beyond the legislative power to change or add to those qualifications unless such right is expressly granted by the Constitution itself." To the same effect, see: *Stensoff v. State*, 80 Tex. 428, 15 S. W. 1100; *Dickson v. Strickland*, 265 S. W. 1012; *State v. Court of Civil Appeals*, 123 Tex. 549, 75 S. W. 2d 253. Also see *Graham Purcell v. Jim Lindsey*, 158 Tex. 541, 314 S. W. 2d 283.

It is true that the Texas Legislature has attempted to authorize in statutory language the use of the filing fees for revenue purposes, although such attempt was void under the *Waples* case; but the Legislature never intended to authorize the filing fees for any other purpose. And the Appellants are challenged to designate the exact words in the *Texas Election Code* expressing any legislative intent to use the filing fees to limit access to the ballot to "serious candidates."

"A law is the best expositor of itself," said Mr. Justice Marshall in *Pennington v. Coxe*, 2 Cranch (6 U. S.) 34, 52.

Or, as Mr. Justice Holmes expressed it: "We do not ask what the legislature meant; we ask only what the statute means." *The Theory of Legal Interpretation*, 12 *Harvard Law Review*, 419.

Justice Cardozo said much the same thing in *United States v. Great Northern Railway*, 287 U. S. 144, 154: "We have not travelled in our search for the meaning of the law makers beyond the borders of the statute."

The rule of strict construction applies especially to tax statutes. "There is no latitude in a taxing statute," said Mr. Justice Sutherland, in *Irwin v. Gavit*, 286 U. S. 161, 169, "you must adhere to the very words."

The Supreme Court has recently expressed the same rule in a different way, in *Kramer v. Union School District, supra*, 395 U. S. 621, 23 L. Ed. 2d 583, 592. "(T)he classifications must be tailored so that the exclusion . . . is necessary to achieve the articulated state goal."

The only articulated State goal expressed in the *Texas Election Code* for the deposit and party assessment is that of raising revenue. But the Texas Supreme Court ruled in *Waples* that the use of tax revenues to finance a party primary election is invalid under the State Constitution; and the Three-Judge Court has ruled that a filing fee violates the Federal Constitution "when it is used as a revenue collecting device." Thus, the Supreme Court of the United States cannot approve the State articulated

goal of "revenue collecting" without overturning the solemn judgment of both lower courts.

Although the unarticulated major goal of the filing fee in a one-party State may very well be to limit the number of candidates eligible to challenge the "Establishment," the Democratic Party cannot usurp the authority to impose voting restrictions which the State Legislature is powerless to legislate, for it has been held that "(i)f a law has no other purpose than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it (is) patently unconstitutional." *Shapiro v. Thompson*, 394 U. S. 618, 631; *United States v. Jackson*, 390 U. S. 570, 581.

## IV.

## The Filing Fee Makes Affluence An Electoral Standard

### A. The $50 Poll Tax

The poll tax of $1.75 heretofore required by the State of Texas as a precondition to the right of a citizen to vote for *others* as candidates for public office was declared unconstitutional by the federal courts in 1966. *United States v. Texas, supra*, 252 F. Supp. 234, 384 U. S. 155.

The poll tax of $50 still required by the State of Texas as a precondition to the right of a citizen to vote for *himself* as a candidate for certain offices ("deposit to accompany application for place on ballot," Article 13.07a, *Texas Election Code*) is here being challenged, as violative of the First Amendment

and Fourteenth Amendment rights of all candidates, and additionally of the Twenty-Fourth Amendment rights of candidates for Congress.

Mr. Justice William O. Douglas, in his recent book, *Points of Rebellion*, Random House, Inc., N. Y., at page 72, states that the Texas poor constitute 28.8 per cent of the population of the State.

Although the payment of a $50 tax may not seem unduly burdensome to a person of ordinary means, the amount is prohibitive to an indigent person with no savings and very little income.

"When Congress has made reasonable findings of fact and embodied them in reasonably related legislation," the court said, in *Century Arms, Inc. v. Kennedy*, 323 F. Supp. 1002, "its decisions are to be given special deference." Congress has made reasonable findings with reference to the poll tax which are entitled to "special deference."

Section 10a of the Voting Rights Act of 1965, 79 Stat. 437, 1965, reads as follows: "The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color."

If the requirement of a poll tax of less than $2 pre-

cludes persons of limited means from voting, then more than one-fourth of the population of Texas are precluded from running for public office by a $50 poll tax on political candidates.

In *Breedlove v. Suttles*, 302 U. S. 277, 281, the court said with reference to the poll tax, "collection from all would be impossible for always there are many too poor to pay."

In *Harper v. Virginia Board of Elections, supra*, 383 U. S. 663, the court held that Virginia's poll tax, which was used to support "free public schools," worked an invidious discrimination because exercise of the right to vote was conditioned upon economic status, and payment of the tax had no relation to voter qualification.

In *United States v. Texas, supra*, 252 F. Supp. 234, 254, the court said, "It is clear . . . that the Legislature and the people may not choose to deny a fundamental constitutional right as a means of collecting revenue. * * * If the State of Texas placed a tax on the right to speak at the rate of one dollar and seventy-five cents per year, no court would hesitate to strike it down as a blatant infringement of the freedom of speech. Yet the poll tax as enforced in Texas is a tax on the equally important right to vote."

The State of Texas has placed a $50 poll tax, not only on the right to vote for oneself, but on the equally important right of a citizen to speak as a political candidate, and this court should not hesitate to "strike it down, as a blatant infringement of the freedom of speech."

But, more importantly, the $50 candidate tax works an invidious discrimination, because the fundamental constitutional right to seek public office is conditioned upon economic status. And a State may no more fence out indigents who seek elective office than it may try to fence out indigents generally.

The Appellants contend that the tying of the $50 tax to the right to run for office is necessary to raise revenue to finance the primary election, and every candidate should pay the party assessment or forfeit his place on the ballot.

Mr. Justice Brennan, in delivering the opinion of the court in a public welfare case, *Shapiro v. Thompson, supra,* 394 U. S. 618, 632-633, answered this argument rather completely:

> "Appellants' reasoning would logically permit the state to bar . . . [indigents] from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services. We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other purpose. But a state may not accomplish such a purpose by invidious distinctions."

In *Boddie v. Connecticut, supra,* 39 L. W. 4294 the Court more recently considered the same problem and struck down a filing fee of $45 for an indigent divorce

applicant. "Other alternatives exist to fees and cost requirements," the court said. "(T)he state's asserted interest in its fee and cost recoupment . . . was offered and rejected in *Griffin v. Illinois*, *supra*, 351 U. S. 12 (1956)."

### B. The $6,300 Party Assessment

The Supreme Court of Illinois, in the case of *People v. Board*, 44 N. E. 321, held that a statute requiring filing fees of $25, $50, $75 and $100 was an illegal and arbitrary discrimination in favor of one able and willing to make cash contributions against one unable or unwilling to do so, and the attempt of the legislature to require candidates "to buy their way into office" was an unwarranted hindrance and impediment to the rights of the candidates and voters alike.

In the case at bar, the State of Texas, acting through The Democratic Party of Tarrant County, attempted to require local candidates in the 1970 primary election "to buy their way into office" by a set of filing fees eighty-nine times as high as those outlawed in 1906 by the State of Illinois. See Table I, page 42, and Table II, page 43, for a schedule of these enormous fees.

"The reach of the Equal Protection Clause is not definable with mathematical precision." Mr. Justice Douglas said recently in *Boddie v. Connecticut*, *supra*, 39 L. W. 4294, 4298, "But rather definite guidelines have been developed: *race* is one . . .; *religion* is another . . .; *poverty* is still another . . .; and *class* or *caste* yet another . . . Here the invidious discrimina-

tion is based on one of the guidelines: poverty." Poverty is a suspect legislative classification. *Meltzer v. LeCraw & Co.*, 39 L.W. 3483, 3484.

Congress has found that the requirement of the payment of a poll tax precludes persons of limited means from voting, and the Texas poll tax of $1.75 has been struck down as a tax on the "important right to vote."

The right to seek . . . an elective office is an analogue or corollary to the right to vote. *Jenness v. Little, supra*, 306 F. Supp. 925, 927, appeal dismissed 90 S. Ct. 820. *Spillers v. Slaughter*, 325 F. Supp. 550, 552.

Logic would impel the conclusion that a poll tax on the important right to seek an elective office would suffer the same constitutional infirmity as a poll tax on the important right to vote, and to the same extent. In other words, a poll tax of $1.75 is unconstitutional, whether applied to citizens who want to vote for others or to citizens who want to vote for themselves, especially in connection with federal offices.

But in the case at bar we are not dealing with a simple tax of $1.75. We are dealing with two separate tax levies, (1) the $50 deposit and (2) the $6,300 party assessment, computed at 32% of the annual salary of the office, which divides itself into two parts: (a) the revenue tax in the amount of $2,726.01, or 43.27% of the assessment, used to finance the election; and (b) the regulatory fee, or monopoly surcharge, in the amount of $3,573.99, or 56.73% of

the assessment, used to restrict the ballot to "serious candidates," and returnable after the election is over.

The question of whether or not a $50 poll tax can restrict the number of persons who seek elective office in not an academic one.

In the Reubin Jenkins *Plea in Intervention (Appendix*, p. 46), a passing reference is made to the office of County Weigher. A fee of $50 was assessed for candidates for this position (*Appendix*, p. 135,), although there is no statutory provision for a filing fee for the office (Exhibit "A," p. 36). No candidate for County Weigher paid a filing fee (*Table* I, p. 42), although obviously at least one candidate had announced, or the question of an assessment would never have been considered. The only inferences deducible from these facts are that the $50 fee ran off all candidates for the office, or these candidates were admitted to the ballot without a fee, along wtih Candidate Wischkaemper, as an indirect result of the preliminary order of the Three-Judge Court on April 3, 1970 (*Appendix*, p. 105).

Table IV, at page 45, shows the median income for all persons over the age of 14 in the Fort Worth Metropolitan Area to be $2,921, but for whites $3,221, as contrasted with $1,421 for blacks, and $1,844 for members of other races. In other words, it is, for all practical purposes, impossible for the person of median income to pay the filing fees required of candidates for public office in Fort Worth, Texas, and roughly twice as difficult for blacks and *chicanos* to pay these fees as for whites.

The same table shows the median income for white males to be $4,572, as compared with $1,410 for white females; and black males $2,295 as compared with $874 for black females, comparable figures not being available for other races in this category. In other words, the median income for white males is more than three times the median income for white females, and the median income for black males almost three times the median income for black females. It is therefore, roughly three times as difficult for females to pay a filing fee as for males in the Fort Worth area.

Assuming, for purposes of our discussion, that only a person with an annual income of $10,000 or more could save up enough money to pay the filing fees to run for county judge of Tarrant County, only 12,124 out of 190,841 males (12,079 white, 28 black and 17 other males) could qualify, as compared with 574 out of a total of 206,130 females (570 white, 4 black and 0 other races). See Table IV, p. 45.

Or assuming that only those with an annual income in excess of $5,000 could pay the filing fees, only 71,294 out of 190,841 males (70,263 white, 984 black, and 50 other races) could qualify, as compared with 6,381 out of 206,130 females (6,179 white, 202 black, and none of other races).

There are more women than men in the Fort Worth area, but men outnumber women 11 to 1 in the $5,000-plus group and 21 to 1 in the $10,000-plus group.

One person out of ten in the area is Negro, but whites outnumber blacks 65 to 1 in the $5,000-plus

income group and 395 to 1 in the $10,000-plus group. Table IV.

Assuming that only those with an income in excess of $5,000 could raise the filing fees for office, 11 times as many men as women could qualify, and 65 times as many whites as blacks.

Or assuming that only those with an income in excess of $10,000 could raise the filing fees, 21 times as many men as women could qualify, and 395 times as many whites as blacks.

Thus, it would appear that the statutory requirement of the payment of a deposit and party assessment, although apparently fair and impartial on its face, amounts to an indirect designation of race on the ballot, forbidden by *Anderson v. Martin*, 375 U. S. 399, and racial gerrymandering forbidden by *Baker v. City of St. Petersburg*, 5 Cir., 440 F. 2d 294, since more whites can pay the fees than blacks or members of other races.

Also, the male vote is weighted more than the female vote, the white vote more than the black vote, because the personal property qualification falls unequally according to income; and the income groups with candidates on the ballot are more likely to vote than those without candidates on the ballot.

The Supreme Court has considered the problem of vote weighting in the case of *Gray v. Sanders*, 372 U. S. 368: "In view of the provision in the Fifteenth Amendment prohibiting a state from denying or abridging a Negro's right to vote, and the provision

in the Nineteenth Amendment doing the same for women, it would be impermissible discrimination if a state . . . weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote."

Between 1927 and 1953, the State of Texas was before the Supreme Court of the United States five different times over racist primaries financed by party assessments. *Nixon v. Herndon*, 273 U. S. 536; *Nixon v. Condon*, 286 U. S. 73; *Grovey v. Townsend*, 295 U. S. 45; *Smith v. Allwright*, 321 U. S. 649; and *Terry v. Adams*, 345 U. S. 461.

Several heavy-handed attempts to exclude blacks from the party primaries have been declared invalid by the Supreme Court; and now the State of Texas relies upon an entangling web of filing fees to accomplish the same invidious purpose in an indirect way, by making wealth an electoral standard.

Thus, we now have before the Supreme Court a subtle and sophisticated white primary election, weighted to "fence out" from the political processes not only, blacks and *chicanos*, but poor whites as well, from such poverty enclaves as the college campus, the low-income housing project, the rest home, the ghetto, and the military installation.

"Freedom of speech and press and freedom of association for the purpose of advancing ideas and airing grievances," the Supreme Court said, in *Gibson v. Florida Investigation Committee*, *supra*, 372 U. S. 539, "are constitutionally protected not only against heavy-handed frontal attack, but also from

being stifled by more subtle governmental interference."

Discrimination against voters and candidates on the basis of wealth has consistently been found unconstitutional by the Supreme Court.

Within the last two years, the Supreme Court has ruled that non-property owners cannot be constitutionally excluded from voting in school board elections (*Kramer v. Union Free School District, supra*, 395 U. S. 621, 23 L. Ed. 2d 583) revenue bond elections (*Cipriano v. City of Houma*, 395 U. S. 701, 23 L. Ed. 2d 647) and general obligation bond elections (*City of Phoenix v. Kolodziejski*, ___ U. S. ___, 26 L. Ed. 2d 523).

But more importantly, only last year, in *Turner v. Fouche*, ___ U. S. ___, 24 L. Ed. 2d 567, the Supreme Court invalidated a Georgia statute restricting membership on county boards of education to freeholders, i.e., owners of a "single square inch of land," holding that ". . . the plaintiffs and members of their class have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications . . . A state may not deny to some the privileges of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guaranties."

"(A) man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States . . . The mere state of being without funds is a neutral fact—con-

stitutionally an irrelevance, like race, creed, or color." *Edwards v. California, supra*, 314 U. S. 160, 184-185.

In *Harper v. Virginia State Board of Elections, supra*, 383 U. S. 663, the Supreme Court held that a State violates the Equal Protection Clause ". . . whenever it makes the affluence of the voters or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying this or any other tax . . ." The Court summed up the case by saying: "Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process."

## CONCLUSION

*"The plaintiffs and members of their class have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications."*

If the State of Texas could not, under the First Amendment, require a license fee as a precondition to the right of a citizen to speak, publish a newspaper, distribute handbills, hold a public meeting, or practice religion, then it certainly should not be allowed to require a license fee as a precondition to the right of a citizen to seek elective office which is also a fundamental right protected by the First Amendment.

*"A State may not deny to some the privileges of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guaranties."*

If the State of Georgia could not require the ownership of real property (i.e., one square inch of land) as a qualification for elective office, the State of Texas should not be allowed to require the ownership of personal property (i.e. $6,350 in cash) as a qualification for elective office, especially since the State of Texas confiscates the personal property through filing fee taxation, while the State of Georgia allowed the citizen to retain title to his one square inch of land.

*"A man's mere property status, without more, cannot be used to test, qualify, or limit his rights as a citizen of the United States."*

If the State of Texas could not require a license fee of $1.75 as a precondition to the right of a citizen to

vote for another as a candidate for elective office, it should not be allowed to require the payment of a license fee of $1.75 as a precondition to the right of a citizen to vote for himself as a candidate for elective office.

*"A State violates the Equal Protection Clause whenever it makes affluence or the payment of any fee an electoral standard."*

Respectfully submitted

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## CERTIFICATE OF SERVICE

I, A. L. Crouch, attorney for Appellees Theodore H. Wischkaemper and Reubin Jenkins and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24 day of August, 1971, I served a copy of the foregoing Appellees' Brief on the Appellants by depositing a copy in the United States mail, postage prepaid, and addressed to the attorneys of record for Appellants, as follows:

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## EXHIBIT "A"

## THE TEXAS FILING FEE STATUTES

The Texas Election Code goes into minute and cumbersome detail creating arbitrary and unreasonable classifications of filing fee taxes. There is a different set of filing fees for municipal elections, special elections and primary elections.

1. Municipal elections are covered by Art. 13.53, which authorizes independent candidates to qualify for a place on the ballot by filing a petition signed by 25 qualified voters, but other candidates must qualify by "paying such filing fees as may be required by statute or by charter provisions."

2. Special elections are covered by Art. 4.10, which sets filing fees as follows: "$1,000 for a Statewide office, including without limitation the offices of United States Senator and United States Congressman at Large, a fee of $500 for the District office of United States Representative, a fee of $150 for the district office of State Senator or State Representative, and a fee of $10 for a city office. Such fees shall be deposited in the general fund of the State or City, as the case may be."

3. Primary Elections are covered by several different Articles, which provide for four sub-classifications of primary filing fees, as follows: (1) Percentage fees are required of candidates for two offices: Congressman at Large, 5% of the annual salary, or $2,125; and Justices of the Courts of Civil Appeals, 5% of the annual salary, or $1,300. Art. 13.15. (2) Fixed fees are required of candidates for several of-

fices: State Board of Education, $50, Art. 13.08-4; United States Senator and all other statewide offices, except Congressman at Large, $1,000. Art. 13.15. (3) Legislative fees, required of candidates for State Senator and State Representative, fall into four categories: (a) Candidates in special elections, pay $150, Art. 4.10; (b) except as otherwise provided in the Election Code, the fee for State Representative is $150, Art. 13.16-2; (c) some candidates pay a fee which is determined by the number of counties in the district: when there are no more and no less than two counties in the district, the fee is $100 per county, Art. 13.16-7; and when there are 8 and not more than 9 counties in the district, the fee is $25 per county, Art. 13.08a-5; and (d) some candidates pay a fee which is determined according to the population of the various counties in the district, an invidious discrimination against residents of the populous counties in favor of residents of the rural counties, *Moore v. Ogilvie*, 394 U. S. 814 (1969), such fees being compiled in the following table:

| *Population of County* | *Senator* | *Representative* | *Article* |
|---|---|---|---|
| 5,000 or less | $1** | $1** | 13.16.1-1 |
| 5,000 to 10,000 | $5** | $5** | 13.16.1-2 |
| 10,000 to 40,000 | $10** | $10** | 13.16.1-3 |
| 40,000 to 125,000 | $50** | $50** | 13.16.1-4 |
| 125,000 to 200,000 | $75** | $75** | 13.16.1-5 |
| over 200,000 | $100** | $100** | 13.16.1-6 |
| 350,000 to 640,000 | $300 | $300 | 13.08a-1 |
| 650,000 to 900,000 | $1,000* | $600 | 13.08a |
| 900,000 to 1,000,000 | $300 | $300 | 13.08a |
| over 1,000,000 | $1,000 | $500† | 13.08a |

**Per county

*If part of county is joined to 2 or more other counties, candidates for State Senator of the district shall pay $250.

†or less

(4) Assessed fees in addition to a $50 deposit, Art. 13.07a, are paid by all other candidates for district, county and precinct offices, such fees being determined by the county executive committee of the political party, giving due consideration to the importance, emolument and term of office for which nomination is to be made, Art. 13.08-I, with no statutory ceiling provided for such fees, except in counties having a population in excess of one million (there are only two), where the maximum fee allowed is 10% of the annual salary for 2-year offices (there is only one, that of U. S. Representative) and 15% of the annual salary for 4-year offices, Art. 13.08a.

The classifications, sub-classifications, and sub-sub-classifications of filing fees outlined above are wholly wanting in reason, and can have no rational explanation other than political expediency and legislative favoritism. The legislature has no constitutional authority to require county executive committees to take into consideration the importance, emolument and term of office in assessing local filing fees when it refuses to apply the same standards to the fees it sets for its own members and for favored friends in district and statewide offices.

## EXHIBIT "B"

## ANALYSIS OF CERTAIN FILING FEE SCHEDULES

The primary filing fees which have been assessed by the different county executive committees are a hodge-podge of discriminatory and unequal taxes which are arbitrary, excessive and oppressive on their face. Five tables have been prepared and attached hereto for purposes of illustration.

Table I shows the fees paid by local candidates in the 1970 Tarrant County Democratic primaries, such fees, for 41 offices, falling into 15 different "classifications" and ranging in amount from $50 to $8,900.

It is interesting to note that of the 60 candidates involved, 37 incumbents paid filing fees of $161,000, or 77.3% of the total of $208,200, while 23 challengers paid filing fees of only $47,200, or 22.7% of the total, and 2 candidates forfeited $50 deposits by failing to ante up the assessed filing fees, possibly in a state of shock at the size of them. Since the incumbents pay their filing fees out of salaries received from the public treasury, it would appear that, indirectly at least, 77.3% of the costs of the 1970 Tarrant County Democratic primaries have been paid out of general tax revenues by Republicans and Independents as well as Democrats. Another significant fact which appears from an examination of this table is that of the 25 incumbents with filing fees in excess of $300, only 2 had opposition, while of the 12 incumbents with filing fees less than $300, 4 had opposition; or, to state the same thing in another way,

of the 23 "outs" on the ballot, 16 were seeking offices where the filing fee was less than $300, and only 7 were seeking offices where the filing fee was in excess of $300 (3 of them running for an open spot where there was no incumbent seeking reelection). Can there be any clearer proof that high filing fees discourage candidacy for public office?

Table II shows the Democratic Party filing fee assessments, rebates and net fees in Tarrant County for 10 recent elections, 1948 through 1970, inclusive with the exception of the years 1950 and 1956, which are not on file in the County Clerk's office. Assessments for the 1936 Democratic primary election in Tarrant County, as reported in *Kaufman, et al. v. Parker*, 99 S. W. 2d 1074, ranged from $5 for constable to $650 for district attorney, with refunds being from $1 to $130, and the net fees from $4 to $520. Limiting our study to 8 selected county offices, the 1948 assessments ranged from $740 to $1,640, the refunds from $208.36 to $461.77, and the net fees from $531.64 to $1,178.23, while the 1970 assessments (for the same offices) ranged from $5,325 to $8,900, the refunds from $3,020.87 to $5,048.97, and the net fees from $2,304.13 to $3,851.03! Perhaps more significant than the increase in the size of the filing fees in Tarrant County for this period, however, is the increase in the size of rebates, from 28% in 1948 to 56.73% in 1970, with 5 elections out of the last 6 having rebates of more than 50%! Deliberate premeditated overassessment of this magnitude is invidious, purposeful discrimination, *per se*.

Table III shows the filing fees paid by candidates for 8 local offices in 10 different counties in the 1970 Texas Democratic primaries. The assessments have been made at a percentage of the annual salary, ranging from 7% in Denton County to 32% in Tarrant County, while the rebates range from 15% in Denton County to 61% in McLennan County, with three counties out of the 10 having rebates in excess of 50%. Perhaps the most significant feature of this table is the relationship between the figures for the three most populous counties: while Tarrant County, for these 8 offices, has consistently made the largest assessments and given the largest rebates, yet it just as consistently has the smallest *net fees* of all 3 counties. The Texas Constitution, Art. VIII, Sec. 1, provides that: "Taxation shall be equal and uniform . . ." If there is either equality or uniformity in any of these filing fees, it would probably be due to accident rather than design.

Table IV shows the 1970 filing fees for County Judge in 50 Texas counties.

And Table V, although not a schedule of filing fees, relates ability to pay to the filing fees in the Fort Worth area, for it shows the income of persons 14 years of age and over, by race and sex, for the State of Texas, and the Fort Worth metropolitan area.

TABLE I

FILING FEES PAID BY CANDIDATES IN 1970 TARRANT COUNTY DEMOCRATIC PRIMARIES*

| Office | 77.3% Incumbent | 22.7% Opponents No. | 22.7% Opponents Amount | 100% Total |
|---|---|---|---|---|
| Judge, 141st District Court | $ 8,900 | | -0- | $ 8,900 |
| Judge, Criminal District Court No. 1 | 8,900 | | -0- | 8,900 |
| Judge, Criminal District Court No. 3 | 8,900 | | -0- | 8,900 |
| Judge, Criminal District Court No. 4 | 8,900 | | -0- | 8,900 |
| Judge, Domestic Relations Court No. 1 | 8,900 | | -0- | 8,900 |
| Judge, Domestic Relations Court No. 2 | 8,900 | | -0- | 8,900 |
| Judge, Domestic Relations Court No. 4 | 8,900 | | -0- | 8,900 |
| District Attorney | 7,300 | | -0- | 7,300 |
| U. S. Representative, District No. 12 | 6,800 | | -0- | 6,800 |
| Judge, County Probate Court | 6,650 | | -0- | 6,650 |
| Judge, County Court at Law | 6,650 | | -0- | 6,650 |
| Judge, County Criminal Court No. 1 | 6,650 | | -0- | 6,650 |
| Judge, County Criminal Court No. 2 | 6,650 | | -0- | 6,650 |
| Judge, County Criminal Court No. 3 | 6,650 | | -0- | 6,650 |
| Judge, County Court | 6,300 | (1) | $ 6,300 | 12,600 |
| District Clerk | 6,300 | | -0- | 6,300 |
| County Clerk | 6,300 | | -0- | 6,300 |
| County Commissioner, Precinct No. 2 | -0- | (3) | 18,300 | 18,300 |
| County Commissioner, Precinct No. 4 | 6,100 | (3) | 18,300 | 24,400 |
| County Treasurer | 5,325 | | -0- | 5,325 |
| Justice of the Peace, Precinct No. 1 | 4,700 | | -0- | 4,700 |
| Justice of the Peace, Precinct No. 2 | 4,700 | | -0- | 4,700 |
| Judge, 67th District Court (½ term) | 4,450 | | -0- | 4,450 |
| Justice of the Peace, Precinct No. 3 | 2,900 | | -0- | 2,900 |
| U. S. Representative, District No. 6* | 1,000* | | -0- | 1,000* |
| Justice of the Peace, Precinct No. 8 | 600 | | -0- | 600 |
| Justice of the Peace, Precinct No. 6 | 300 | | -0- | 300 |
| State Senator, District No. 10 | 300 | (2) | 600 | 900 |
| State Senator, District No. 22* | 300* | (1) | 300* | 600* |
| State Representative, Place 1 | -0- | (4) | 1,200 | 1,200 |
| State Representative, No. 2 | -0- | (2) | 600 | 600 |
| State Representative, Place 3 | 300 | | -0- | 300 |
| State Representative, Place 4 | 300 | (1) | 300 | 600 |
| State Representative, Place 5 | 300 | | -0- | 300 |
| State Representative, Place 6 | -0- | (4) | 1,200 | 1,200 |
| State Representative, Place 7 | 300 | | -0- | 300 |
| State Representative, Place 8 | 300 | | -0- | 300 |
| Justice of the Peace, Precinct No. 5 | 125 | | -0- | 125 |
| Justice of the Peace, Precinct No. 4 | 50 | (2) | 100 | 150 |
| Justice of the Peace, Precinct No. 7 | 50 | | -0- | 50 |
| County Surveyor | 50 | | -0- | 50 |
| Total | (37) $161,000 | (23) | $ 47,200 | (60) $208,200 |
| 2 candidates forfeited $50 deposit | | | 100 | 100 |
| | | | $ 47,300 | $208,300 |

2 candidates for County Weigher did not pay assessed fee of $50. See Appendix, p. 135

*More than one county in the District.

*Compiled from Exhibit "C," Stipulation of August 21, 1970.

## TABLE II

### TARRANT COUNTY DEMOCRATIC PRIMARY FILING FEES FOR 8 LOCAL OFFICES, 1948-1970, WITH 1950 AND 1956 NOT AVAILABLE*

| | | 1948 | 1952 | 1954 | 1958 | 1960 | 1962 | 1964 | 1966 | 1968 | 1970 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| District Judge | Assessment | 1,640.00 | 3,354.00 | 3,500.00 | 5,408.00 | 6,200.00 | 6,120.00 | 6,480.00 | 6,160.00 | 6,720.00 | 8,900.00 |
| | Refund | 461.77 | 915.65 | 709.79 | 2,627.82 | 3,178.67 | 3,160.00 | 3,285.97 | 3,850.00 | 2,282.00 | 5,048.97 |
| | Net Fee | 1,178.23 | 2,438.35 | 2,790.21 | 2,780.18 | 3,021.33 | 2,960.00 | 3,194.03 | 2,310.00 | 4,438.00 | 3,851.03 |
| District Attorney | Assessment | 740.00 | 1,241.50 | 1,900.00 | 3,840.00 | — | 4,896.00 | — | 5,040.00 | — | 7,300.00 |
| | Refund | 208.36 | 338.93 | 385.32 | 1,862.75 | — | 2,530.43 | — | 3,150.00 | — | 4,141.29 |
| | Net Fee | 531.64 | 902.57 | 1,514.62 | 1,977.25 | — | 2,365.57 | — | 1,890.00 | — | 3,158.71 |
| District Clerk | Assessment | 740.00 | 1,241.50 | 1,900.00 | 3,840.00 | — | 4,080.00 | — | 4,200.00 | — | 6,300.00 |
| | Refund | 208.36 | 338.93 | 385.32 | 1,862.75 | — | 2,116.69 | — | 2,625.00 | — | 3,573.99 |
| | Net Fee | 531.64 | 902.57 | 1,514.62 | 1,977.25 | — | 1,863.31 | — | 1,575.00 | — | 2,726.01 |
| County Judge | Assessment | 740.00 | 1,358.00 | 2,000.00 | 4,448.00 | — | 4,862.00 | — | 4,804.80 | — | 6,300.00 |
| | Refund | 208.36 | 370.34 | 405.60 | 2,162.12 | — | 2,510.19 | — | 3,003.00 | — | 3,573.99 |
| | Net Fee | 531.64 | 987.66 | 1,594.40 | 2,285.88 | — | 2,351.81 | — | 1,801.80 | — | 2,726.01 |
| County Court at Law | Assessment | 600.00 | 1,157.00 | 1,800.00 | 3,840.00 | — | 4,080.00 | — | 4,480.00 | — | 6,650.00 |
| | Refund | 168.94 | 315.86 | 365.04 | 1,862.75 | — | 2,116.69 | — | 2,800.00 | — | 3,772.55 |
| | Net Fee | 431.06 | 841.14 | 1,434.96 | 1,977.25 | — | 1,863.31 | — | 1,680.00 | — | 2,877.45 |
| County Commissioner | Assessment | 550.00 | 1,115.00 | 1,750.00 | 3,840.00 | 4,560.00 | 4,080.00 | 4,320.00 | 4,032.00 | 4,032.00 | 6,100.00 |
| | Refund | 154.86 | 304.40 | 354.90 | 1,862.75 | 2,339.51 | 2,116.69 | 2,190.65 | 2,520.00 | 1,369.25 | 3,460.53 |
| | Net Fee | 395.14 | 810.60 | 1,395.10 | 1,977.25 | 2,220.49 | 1,963.31 | 2,129.35 | 1,512.00 | 2,662.75 | 2,639.47 |
| County Treasurer | Assessment | 370.00 | 760.50 | 900.00 | 3,360.00 | — | 3,570.00 | — | 3,360.00 | — | 5,325.00 |
| | Refund | 104.18 | 207.62 | 182.51 | 1,634.07 | — | 1,846.86 | — | 2,100.00 | — | 3,020.87 |
| | Net Fee | 265.82 | 552.88 | 717.49 | 1,725.93 | — | 1,723.14 | — | 1,260.00 | — | 2,304.13 |
| County Clerk | Assessment | 740.00 | 1,241.50 | 1,900.00 | 3,840.00 | — | 4,080.00 | 0 | 4,200.00 | — | 6,300.00 |
| | Refund | 208.36 | 338.93 | 385.32 | 1,862.75 | — | 2,116.69 | — | 2,625.00 | — | 3,573.99 |
| | Net Fee | 531.64 | 902.57 | 1,514.68 | 1,977.25 | — | 1,863.31 | — | 1,575.00 | — | 2,726.01 |
| Rebate % of assessment | | 28.157% | 27.3% | 20.28% | 48.6% | 51.3% | 51% | 54% | 62.5% | 33.96% | 56.73% |

*Compiled from information reported in Exhibit "C" attached to Stipulation of Fact of August 21, 1970.

## TABLE III

### FILING FEES PAID BY CANDIDATES FOR 8 LOCAL OFFICES IN 10 COUNTIES IN 1970 TEXAS DEMOCRATIC PRIMARIES*

| | | Tarrant | Bexar | Dallas | Jefferson | McLennan | Galveston | Lubbock | Wichita | El Paso | Denton |
|---|---|---|---|---|---|---|---|---|---|---|---|
| District Judge | Assessment | 8,900.00 | 7,840.00 | 6,720.00 | 4,500.00 | 3,405.00 | 3,380.00 | 2,700.00 | 2,954.00 | 1,490.00 | 1,400.00 |
| | Refund | 5,048.97 | 1,991.46 | 2,240.00 | 1,890.00 | 2,077.05 | 1,443.26 | 1,000.00 | 1,624.70 | 417.03 | 210.00 |
| | Net Fee | 3,851.03 | 5,848.54 | 4,480.00 | 2,610.00 | 1,327.95 | 1,936.74 | 1,700.00 | 1,329.30 | 1,072.97 | 1,190.00 |
| District Attorney | Assessment | 7,300.00 | 5,740.00 | 6,000.00 | 4,500.00 | 1,872.00 | 2,600.00 | — | — | — | — |
| | Refund | 4,141.29 | 1,458.04 | 2,000.00 | 1,890.00 | 1,141.92 | 1,110.20 | 0 | — | — | — |
| | Net Fee | 3,158.71 | 4,281.96 | 4,000.00 | 2,610.00 | 730.08 | 1,489.80 | — | — | — | — |
| District Clerk | Assessment | 6,300.00 | 4,200.00 | 4,800.00 | 2,400.00 | 2,064.60 | 1,950.00 | 1,386.00 | 1,584.00 | 1,480.00 | 777.00 |
| | Refund | 3,573.99 | 1,066.86 | 1,600.00 | 1,008.00 | 1,257.41 | 848.25 | 500.00 | 871.20 | 424.23 | 116.55 |
| | Net Fee | 2,726.01 | 3,133.14 | 3,200.00 | 1,392.00 | 807.19 | 1,101.75 | 886.00 | 712.80 | 1,055.77 | 660.45 |
| County Judge | Assessment | 6,300.00 | 6,300.00 | 6,480.00 | 3,233.33 | 2,160.00 | 2,340.00 | 1,386.00 | — | 1,780.00 | 777.00 |
| | Refund | 3,573.99 | 1,600.28 | 2,160.00 | 1,359.00 | 1,317.60 | 999.18 | 500.00 | — | 496.20 | 116.55 |
| | Net Fee | 2,726.01 | 4,699.72 | 4,320.00 | 1,874.33 | 842.40 | 1,340.82 | 886.00 | 0 | 1,283.80 | 660.45 |
| County Court at Law | Assessment | 6,650.00 | 5,180.00 | 5,520.00 | 3,300.00 | 2,064.60 | 2,340.00 | 1,386.00 | 2,114.40 | 1,480.00 | 777.00 |
| | Refund | 3,772.55 | 1,315.79 | 1,840.00 | 1,386.00 | 1,257.41 | 999.18 | 500.00 | 1,162.92 | 424.23 | 116.55 |
| | Net Fee | 2,877.45 | 3,864.21 | 3,680.00 | 1,914.00 | 807.19 | 1,340.82 | 886.00 | 951.48 | 1,055.77 | 660.45 |
| County Commissioner | Assessment | 6,160.00 | 4,200.00 | 5,520.00 | 2,400.00 | 1,789.20 | 1,560.00 | 1,212.75 | 1,320.00 | 960.00 | 777.00 |
| | Refund | 3,460.53 | 1,066.86 | 1,840.00 | 1,008.00 | 1,091.41 | 666.12 | 400.00 | 726.00 | 263.69 | 116.55 |
| | Net Fee | 2,639.47 | 3,133.14 | 3,680.00 | 1,392.00 | 697.79 | 893.88 | 812.75 | 594.00 | 696.31 | 660.45 |
| County Treasurer | Assessment | 5,325.00 | 3,920.00 | 4,680.00 | 2,400.00 | 1,230.30 | 1,560.00 | 1,386.00 | 1,267.20 | 960.00 | 546.00 |
| | Refund | 3,020.87 | 995.73 | 1,560.00 | 1,008.00 | 750.48 | 666.12 | 500.00 | 696.96 | 268.69 | 81.90 |
| | Net Fee | 2,304.13 | 2,924.27 | 3,120.00 | 1,392.00 | 479.82 | 893.88 | 886.00 | 570.24 | 691.31 | 464.10 |
| County Clerk | Assessment | 6,300.00 | 4,200.00 | 4,800.00 | 2,450.00 | 2,064.60 | 1,950.00 | 1,386.00 | 1,584.00 | 1,480.00 | 777.00 |
| | Refund | 3,573.99 | 1,066.86 | 1,600.00 | 1,008.00 | 1,257.41 | 832.65 | 500.00 | 871.20 | 424.23 | 116.55 |
| | Net Fee | 2,726.01 | 3,133.14 | 3,200.00 | 1,442.00 | 807.19 | 1,117.35 | 886.00 | 712.80 | 1,055.77 | 660.45 |
| Assesment % of annual salary | | 32% | 28% | 24% | 17% | 11%-15% | 15% | 21% | 8%-12% | 17% | 7% |
| Rebate % of assessment | | 56.73% | 25.4% | 33.33% | 42% | 61% | 42.7% | 36% | 55% | 28% | 15% |

*Compiled from information reported in Exhibits "A", "B", and "C", attached to Stipulation of Fact of August 21, 1970

## TABLE IV
## INCOME OF PERSONS 14 YEARS OF AGE AND OVER, BY RACE AND SEX, FOR THE STATE OF TEXAS AND THE FORT WORTH METROPOLITAN AREA*

| AREA, RACE, AND SEX | TOTAL (INCLUDES PERSONS WITHOUT INCOME) | PERSONS WITH INCOME | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | TOTAL | $1 TO $999 OR LOSS | $1,000 TO $1,999 | $2,000 TO $2,999 | $3,000 TO $3,999 | $4,000 TO $4,999 | $5,000 TO $5,999 | $6,000 TO $6,999 | $7,000 TO $9,999 | $10,000 AND OVER | MEDIAN INCOME (DOL.) |
| THE STATE | | | | | | | | | | | | |
| TOTAL | 6 562 992 | 4 604 370 | 1 380 717 | 717 347 | 566 677 | 498 275 | 414 222 | 332 137 | 231 375 | 279 080 | 184 540 | 2 360 |
| WHITE | 5 783 676 | 4 031 592 | 1 116 269 | 593 945 | 483 686 | 447 391 | 384 778 | 319 205 | 226 940 | 275 908 | 183 470 | 2 632 |
| NEGRO | 767 045 | 565 001 | 262 174 | 121 690 | 81 794 | 50 116 | 28 857 | 12 551 | 4 182 | 2 756 | 881 | 1 167 |
| OTHER RACES | 12 271 | 7 777 | 2 274 | 1 712 | 7 197 | 768 | 587 | 381 | 253 | 416 | 189 | 1 943 |
| MALE | 3 210 190 | 2 887 391 | 537 148 | 392 487 | 363 345 | 340 545 | 314 149 | 288 329 | 212 802 | 263 876 | 174 710 | 3 443 |
| WHITE | 2 838 910 | 2 567 319 | 436 390 | 328 322 | 294 690 | 296 638 | 289 765 | 277 330 | 209 182 | 261 215 | 173 787 | 3 756 |
| NEGRO | 365 259 | 314 786 | 99 622 | 63 085 | 67 707 | 43 297 | 23 937 | 10 663 | 3 411 | 2 317 | 747 | 1 916 |
| OTHER RACES | 6 021 | 5 286 | 1 136 | 1 080 | 948 | 610 | 447 | 336 | 209 | 344 | 176 | 2 450 |
| FEMALE | 3 352 802 | 1 716 979 | 843 569 | 324 860 | 203 332 | 157 730 | 100 073 | 43 808 | 18 573 | 15 204 | 9 830 | 1 046 |
| WHITE | 2 944 766 | 1 464 273 | 679 879 | 265 623 | 188 996 | 150 753 | 95 013 | 41 875 | 17 758 | 14 693 | 9 683 | 1 197 |
| NEGRO | 401 786 | 250 215 | 162 552 | 58 605 | 14 087 | 6 819 | 4 920 | 1 888 | 771 | 439 | 134 | 770 |
| OTHER RACES | 6 250 | 2 491 | 1 138 | 632 | 249 | 158 | 140 | 45 | 44 | 72 | 13 | 1 170 |
| FORT WORTH | | | | | | | | | | | | |
| TOTAL | 396 971 | 287 737 | 72 934 | 39 973 | 33 626 | 32 799 | 30 730 | 26 246 | 16 977 | 21 754 | 12 698 | 2 921 |
| WHITE | 357 880 | 256 921 | 60 791 | 32 308 | 28 766 | 29 813 | 28 801 | 25 492 | 16 718 | 21 583 | 12 649 | 3 221 |
| NEGRO | 39 097 | 30 511 | 12 069 | 7 572 | 4 826 | 2 965 | 1 896 | 732 | 256 | 163 | 32 | 1 421 |
| OTHER RACES | 494 | 305 | 74 | 93 | 34 | 21 | 33 | 22 | 3 | 8 | 17 | 1 844 |
| MALE | 190 841 | 175 347 | 23 045 | 17 492 | 18 806 | 21 463 | 23 247 | 22 763 | 15 680 | 20 727 | 12 124 | 4 295 |
| WHITE | 172 275 | 159 017 | 19 182 | 14 386 | 14 816 | 18 757 | 21 613 | 22 147 | 15 453 | 20 584 | 12 079 | 4 572 |
| NEGRO | 18 309 | 16 130 | 3 841 | 3 054 | 3 960 | 2 689 | 1 605 | 594 | 224 | 135 | 28 | 2 295 |
| OTHER RACES | 257 | 200 | 22 | 52 | 30 | 17 | 29 | 22 | 3 | 8 | 17 | 2 867 |
| FEMALE | 206 130 | 112 390 | 49 889 | 22 481 | 14 820 | 11 336 | 7 483 | 3 483 | 1 297 | 1 027 | 374 | 1 281 |
| WHITE | 185 105 | 97 904 | 41 609 | 17 922 | 13 950 | 11 056 | 7 188 | 3 345 | 1 265 | 999 | 570 | 1 410 |
| NEGRO | 20 788 | 14 281 | 8 228 | 4 518 | 866 | 276 | 291 | 138 | 32 | 28 | 4 | 874 |
| OTHER RACES | 237 | 105 | 52 | 41 | 4 | 4 | 4 | — | — | — | — | — |

*From Table 133, Volume I, U. S. Census of Population: 1960, Characteristics of the Population, Part 45, Texas. U. S. Government Printing Office, Washington, D. C. — Figures not yet available for the 1970 census.

## TABLE V

### 1970 FILING FEES FOR COUNTY JUDGE IN 50 TEXAS COUNTIES

| | Annual Salary | % | Assessment | % | Refund | % | Net Fee |
|---|---|---|---|---|---|---|---|
| BAYLOR | $ 6,819.12 | 3 | $ 204.00 | 53½ | $ 109.14 | 1.39 | $ 94.86 |
| BEE | 9,700.00 | 9¼ | 898.00 | 36 | 319.28 | 5.97 | 578.72 |
| BEXAR | 22,500.00 | 28 | 6,300.00 | 25½ | 1,600.28 | 20.89 | 4,699.72 |
| BRAZOS | 12,000.00 | 10 | 1,200.00 | 34.32 | 411.84 | 6.57 | 788.16 |
| BROWN | 8,000.00 | 7 | 560.00 | 53 | 298.21 | 3.27 | 261.79 |
| CAMERON | 9,195.00 | 11 | 1,011.45 | 10 | 101.45 | 9.9 | 910.30 |
| CARSON | 7,944.00 | 6 | 467.64 | 42 | 200.00 | 3.48 | 276.64 |
| CHAMBERS | 9,734.75 | 10 | 973.47 | 55 | 535.40 | 4.5 | 438.07 |
| DALLAS | 27,000.00 | 24 | 6,480.00 | 33 | 2,160.00 | 16 | 4,320.00 |
| DENTON | 12,000.00 | 6.5 | 777.00 | 15 | 116.55 | 5.5 | 660.45 |
| GAINES | 10,700.00 | 7 | 749.50 | 20 | 149.90 | 5.6 | 599.60 |
| GALVESTON | 18,000.00 | 13 | 2,340.00 | 42.7 | 999.18 | 7.45 | 1,340.82 |
| GARZA | 7,110.00 | 6.4 | 450.00 | 15 | 67.50 | 5.38 | 382.50 |
| GOLLIAD | 8,014.00 | 5 | 400.70 | 61 | 244.26 | 2 | 156.44 |
| GRAYSON | 12,230.76 | 17 | 2,082.32 | 70 | 1,457.62 | 5.11 | 624.70 |
| HALE | 10,312.20 | 5 | 514.00 | 13 | 66.82 | 5.34 | 447.18 |
| HIDALGO | 16,200.00 | 13 | 2,106.00 | 21 | 450.00 | 4 | 656.00 |
| HILL | 6,000.00 | 10 | 600.00 | 31 | 222.00 | 6.3 | 378.00 |
| HOCKLEY | 8,910.00 | 4.9 | 438.19 | 37 | 135.84 | 3.4 | 302.35 |
| HOOD | 7,200.00 | 8⅓ | 600.00 | 55 | 330.00 | 3.75 | 270.00 |
| HUDSPETH | 6,000.00 | 5 | 300.00 | 50 | 150.00 | 2½ | 150.00 |
| JASPER | 8,910.00 | 10 | 891.00 | 50 | 445.00 | 5 | 445.00 |
| JEFFERSON | 19,400.00 | 23⅓ | 3,233.33 | 42 | 1,359.00 | 9.66 | 1,874.33 |
| JIM HOGG | 6,750.00 | 12 | 810.00 | 25 | 202.00 | 9.01 | 608.00 |
| KENT | 7,452.00 | 1.78 | 125.00 | 2.5 | 31.60 | 11.25 | 98.40 |
| LUBBOCK | 12,600.00 | 11 | 1,386.00 | 36 | 500.00 | 7.03 | 886.00 |
| LYNN | 6,300.00 | 6 | 378.00 | 66 | 249.48 | 2.04 | 128.52 |
| McLENNAN | 14,400.00 | 15 | 2,160.00 | 61 | 1,317.60 | 5.85 | 842.40 |
| MOTLEY | 6,146.00 | 1⅔ | 100.00 | 20 | 20.00 | 1.3 | 80.00 |
| NAVARRO | 9,708.00 | 12 | 1,164.96 | 44 | 512.58 | 6.72 | 652.38 |
| PARKER | 9,684.60 | 10 | 970.00 | 45 | 436.50 | 5.51 | 533.50 |
| RED RIVER | 6,600.00 | 13 | 850.00 | 47 | 400.00 | 6.82 | 450.00 |
| REEVES | 8,100.00 | 8 | 648.00 | 40 | 259.20 | 4.8 | 388.80 |
| ROCKWALL | 6,600.00 | 7.6 | 500.00 | -0- | None | 7.58 | 500.00 |
| SABINE | 4,461.60 | 5.6 | 250.00 | -0- | None | 5.6 | 250.00 |
| SCURRY | 9,094.92 | 6.5 | 591.15 | 40 | 236.45 | 3.9 | 354.69 |
| SHERMAN | 5,896.80 | 2½ | 147.42 | 43 | 63.37 | 1.43 | 84.65 |
| SMITH | 20,700.00 | 12 | 2,484.00 | 24.98 | 618.06 | 9.01 | 1,866.00 |
| SOMERVELL | 3,820.00 | 5¼ | 200.00 | 47½ | 95.00 | 2.75 | 105.00 |
| STARR | 9,300.00 | 8½ | 790.50 | 48 | 377.65 | 4.44 | 412.85 |
| STERLING | 6,898.98 | 2½ | 172.48 | 40 | 68.99 | 1.5 | 103.49 |
| TARRANT | 19,700.00 | 32 | 6,300.00 | 56.73 | 3,573.99 | 13.84 | 2,726.01 |
| TAYLOR | 12,000.00 | 10 | 1,200.00 | 40 | 480.00 | 6 | 720.00 |
| TRAVIS | 17,800.00 | 18 | 3,204.00 | 43.75 | 1,401.64 | 10.13 | 1,802.36 |
| VAL VERDE | 10,549.00 | 7 | 738.43 | 20 | 147.68 | 5.6 | 590.75 |
| VICTORIA | 12,000.00 | 8 | 960.00 | 45 | 432.00 | 4.4 | 528.00 |
| WHEELER | 6,300.00 | 4 | 252.00 | 18 | 44.10 | 3.3 | 207.90 |
| WICHITA | 17,620.00 | 12 | 2,114.00 | 55 | 1,162.92 | 5.4 | 951.08 |
| WINKLER | 10,694.25 | 4 | 427.75 | 54 | 231.47 | 1.84 | 196.28 |
| WISE | 8,004.00 | 7½ | 600.00 | 50 | 300.00 | 3.75 | 300.00 |

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

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No. 70-128

---

MARTIN DIES, JR., ET AL.,
Appellants

vs.

VAN PHILLIP CARTER, ET AL.,
Appellees

---

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

---

# BRIEF FOR APPELLEES PATE AND GUZMAN, ET AL.

---

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# INDEX


| | Page |
|---|---|
| Statutes Involved | 1 |
| Question Presented | 2 |
| Statement | 3 |
| Summary of Argument | 14 |
| Argument: | |
| I. No Question Present in Texas Brief | 16 |
| II. Appeal Not Moot | 18 |
| III. Wealth Classification per se Unconstitutional | 21 |
| IV. Appellant Dies' Admissions | 32 |
| V. State Action | 35 |
| VI. Correlative Rights-Voters & Candidates | 38 |
| Conclusion | 45 |
| Certificate of Service | 46 |
| Exhibit "A"-Election Statutes | 47 |
| Exhibit "B"-Dies Legislative Report | 55 |
| Exhibit "C"-1970 Election Returns | 79 |

## INDEX OF AUTHORITIES


| | Page |
|---|---|
| Adair v. Drexel 74 Neb. 776 | 40 |
| Anderson v. Martin 375 U.S. 399 | 41 |
| Benites v. Hampton, 123 U.S. 519 | 16 |
| Boddie v. Connecticut U.S (dec. 3/2/71) | 42 |
| Bollinger v. McLaughlin 22 S.D. 206 | 40 |
| Buskin v. Brown 174 F. 2d 391 | 37 |
| Campbell v. Davenport 362 F. 2d 624 | 37 |
| Cipriano v. City of Houma 375 U.S. 701 | 41 |
| Elmore v. Rice 165 F. 2d 387 | 37 |
| Georgia Socialist v. Fortson 315 F. Supp. 1035 | 40 |
| Griffin v. Illinois 351 U.S. 12 | 42 |
| Jenness v. Fortson U.S. , 29L. Ed. 2d 554 | 22, 40, 42 |
| Jenness v. Little 306 F. Supp. 925 | 40 |
| Harper v. Virginia Bd. of Education 383 U.S. 663 | 38, 39 |
| Kramer v. Union Free School 395 U.S. 621 | 41 |
| Kelso v. Cook 184 Ind. 173 | 40 |
| Ledgerwood v. Pitts 122 Tenn. 570 | 40 |
| Moore v. Ogilvie, 394 U.S. 814 | 20 |

New Haven Inclusion Cases,
399 U.S. 392 ..... 2,16
Nixon v. Condon
286 U.S. 73 ..... 35
Nixon v. Herndon
272 U.S. 536 ..... 35
Portland v. United States
82 U.S. 1 ..... 16
Russell v. United States
369 U.S. 749 ..... 2,16
Smith v. Allwright
321 U.S. 649 ..... 17,35,36
Smith v. Bennett
365 U.S. 708 ..... 42
Snowden v. Hughes
321 U.S. 1 ..... 27,41
Terry v. Adams
345 U.S. 461 ..... 37
Travelers Health v. Virginia
339 U.S. 643 ..... 16
Turner v. Fouche,
396 U.S. 346 ..... 41
United States v. Alabama
252 F.2d 95 ..... 39
United States v. Texas
252 F.2d 234 ..... 39
Whitcomb v. Chavez
_U.S._ ( dec. 6/7/71) ... 21
Williams v. Rhodes
393 U.S. 23 ..... 44

Omitted Citations

J.I. Case co. v. Borak
377 U.S. 426 ..... 2,16
Evans v. Cornman
398 U.S. 419 ..... 43
Phoenix v. Kolodziejski
394 U.S. 204 ..... 44

| | Page |
|---|---|
| 1. Constitution | |
| First Amendment | 1, 2, 8, 9, 14, 21 |
| Fourteenth Amendment | 1, 2, 7, 8, 9, 14, 21 |
| 2. Texas Election Code | |
| 13.07a | 2, 4, 8, 17, 18 |
| 13.08 | 2, 4, 8, 12, 17, 18 |
| 13.08a | 2, 4, 8, 17, 18 |
| 13.15 | 2, 5, 8, 20, 34 |
| 13.16 | 2, 5, 8, 17, 18 |
| 13.18 | 12 |
| 13.08a-1 | 18, 19, 20, 23, 43, 44, 45 |
| 13.50 | 32, 44 |
| H.B. 5-Texas (1971 ) | 18, 19, 20, 23, 43, 44, 45 |
| 3. Supreme Court Rules | |
| Rule 40 | 2, 16, 17 |
| 4. Fed. Rules Civ. Proc. | |
| Rule 24 | 3 |
| 5. Texas Constitution | |
| Article 4 | |
| Section 21 | 32 |
| Section 22 | 34 |
| 6. Texas Statutes | |
| Article 3945 | 43 |
| 1895 General Laws | 37 |
| 7. Arizona | |
| Constitution, Art. 7, Sec. 14 | 45 |
| Statute 16-301 to 16-306 | 45 |
| 8. Law Review | |
| 8 Miss. L. J. 139 | 37 |
| Direct Primary in Idaho | 37 |
| 9. The Poll Tax | 45 |
| Will Texas Vote | 25 |

No. 70-128

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1971

---

MARTIN DIES, JR., ET AL.,
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vs.

VAN PHILLIP CARTER, ET AL.,
Appellees

---

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

---

# BRIEF FOR APPELLEE PATE AND GUZMAN, ET AL.

## STATUTES INVOLVED

FIRST AMENDMENT:

" Congress shall make no law * * * abridging the freedome of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

FOURTEENTH AMENDMENT:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Texas statutes held invalid by the court below are Sections 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code. These statutes are set forth in Appendix A herein.

## QUESTION PRESENTED

The sole question presented by Appellants in their Jurisdictional Statement reads as follows:

" Whether Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code are unconstitutional in that they violate the First and Fourteenth Amendments of the Constitution of the United States."

The Appellants have not revived their sole question presented or any other question in their brief and have accordingly abandoned their sole claim or any other claim by failure to comply with Supreme Court Rule 40 (1) (d) (1) and 40 (1) (d) (2). New Haven Inclusion Cases, 399 U.S. 392, 481, n. 78 ( 1970); J.I. Case Co. v. Borak, 377 U.S. 426, 428-429 (1964). Russell v. United States, 369 U.S. 749, 754, n. 7 (1962 ); Travelers Health Assn. v. Virginia, 339 U.S. 643, 651, n. 4 ( 1949 ).

## STATEMENT

This case originated in three separate suits filed in Federal District Courts in the Western District of Texas and the Northern District of Texas ( A. 9, 11, 34 ). A motion to intervene and consolidate was filed by Appellees Jenkins and Guzman, et al., ( A. 49-94). Chief Judge John R. Brown, U.S. Court of Appeals for the Fifth Circuit took notice of the transfer of Pate's cause from the Western District of Texas to the Northern District of Texas and ordered the three judge court below reconstituted ( A. 3 ). These suits were consolidated for all purposes and Appellees Jenkins and Guzman, et al., were allowed to intervene as voters Federal Rules Civil Procedure 24 (a) (2) ( A. 147 ) .

The Appellees brought their actions on behalf of themselves and as class actions ( A. 11, 70, 85) to enjoin and restrain the enforcement of Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code and to have these statutes declared unconstitutional. The three judge court below granted the relief requested ( A. 145-159 ) and enjoined the State of Texas, through its political parties, from the enforcement of these Statutes and declared them unconstitutional ( A. 160-161) . The Appellees Pate's and Wischkaemper's motions for preliminary injunction were granted and they were relieved from payment of the filing fees with the proviso that should their claims be later rejected that they would then have to pay the fees not paid ( A. 106-107) and their names were placed on the ballot in the May 2,

1970 Democratic Primary election ( A.112, 117).

Article 13.07a, Texas Election Code provides all candidates subject to assessment by the County Executive Committee for a part of the expenses of holding the primary election must pay fifty dollars at the time of filing their application for a place on the primary ballot. However, candidates for the State Board of Education need pay only fifty dollars total and a candidate for the legislature need pay only the maximum he may be assessed or the fixed filing fee prescribed for some counties.

Article 13.08, Texas Election Code authorizes the county committee to estimate the cost of the primary election and to apportion such cost among the various candidates for nomination for District, County, and precinct offices except for the offices of Justice of the Court of Civil Appeals, State Board of Education, state senator, and state representative if their assessment or fee is fixed at a definite amount. "In making the assessment upon any candidate the committee should give due consideration to the importance, emolument, and term of office for which the nomination is to be made".

Article 13.08a, Texas Election Code provides that candidates for any precinct, county or district office and the office of Congress in counties with a population of one million or more, except for candidates for the State Legislature and State Board of Education, shall not be assessed more than ten percent of the annual salary for any

office of two-years term and fifteen percent for any office of four year terms. Furthermore, in these counties a candidate for State Representative may be required to pay an amount not to exceed Five Hundred dollars and One Thousand dollars for State Senator. In counties with a population between 900,000 and 1,000,000 candidates for State Senator and State Representative shall pay $300 to have their names placed upon the primary ballot, while candidates for State Senator and State Representatives in counties with a population between 650,000 and 900,00 shall pay $1,000 and $600 respectively. Candidates for State Representative in districts covering from 8 to 9 counties need pay only $25 in each county.

Article 13.15 Texas Election Code provides that candidates for U.S. Senator and all candidates for state officer must pay $1,000 to the Chairman of the State Executive Committee while candidates for Congressman-at-large and for justice of the court of civil appeals shall pay to state executive committee five percent of one year's salary. The above candidates need not pay a filing fee or assessment to any other person or committee.

Article 13.16, Texas Election Code provides unless otherwise provided, no candidate for State Senator shall pay to a county executive committee more than One Dollar for counties of less than 5,000 population; five dollars for counties of 5,000 to 10,000 population; ten dollars for counties of more than 10,000 and less than 40,000 population; fifty dollars for counties of 40,000 and not

more than 125,000 population; seventy-five dollars for counties of more than 125,000 to 200,000 population. However, candidates for State Senator in any senatorial district of two counties need pay only One Hundred dollars regardless of population of such counties. Furthermore, except as otherwise provided in the code, any candidate for State Representative need pay only a total fixed filing fee of $150.00 to be prorated among the counties, if more than one.

The Appellees alleged that the above statutes were unconstitutional on the grounds that said statutes deprived Appellees of an

> " * * * equally effective voice in the election process by an invidious discrimination by imposing * * * exorbitant, unreasonably, arbitrary, capricious, irrelevant, and outrageously high filing fees or assessments which bear no reasonable relation to any legitimate legislative purpose and such filing fees are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. The filing fees or assessments are so high they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay or who fail or refuse to pay the filing fees or assessments imposed * * *"

and,

> "these fees also prevent qualified voters from voting for those persons whose candidacy is prevented by such filing fees. Furthermore, the introduction of wealth as payment of a fee as a prerequisite or measure of a citizen's or voter's qualification to have his name placed on the primary ballot, or to vote, is to introduce a capricious or irrelevant factor , and the requirement of fee paying in this context as a condition to be a candidate or voter * * * causes an invidious discrimination that per se violates the Equal Protection Clause and furthermore, the Texas Statutes under attack permit and provide an invidious classification discrimination between various candidates for different offices by having different filing fees for the various candidates .* * * Furthermore, defendant will effectively deprive the plaintiff of his right to vote, for the right to run for public office is a correlative of the right to vote. The defendants have denied the plaintiff and class plaintiffs their fundamental political right of freedom of association ( political assocation) for the purpose of voting and being nominated as

candidates for public office in the democratic primary in violation of the First Amendment by reason of the Equal Protection and Due Process clauses of the Fourteenth Amendment, by an invidious discrimination through the establishment of filing fees as a prerequisite to running for nomination to public office * * * Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, are void and unconstitutional as they violate the equal protection and due process clauses of the Fourteenth Amendment, and the Freedom of Assembly clauses of the First Amendment to the United States Constitution, in that they impose and permit filing fees or assessments * * * primary election * * * and in future primary elections, upon persons who by reason of their lack of funds or poverty, are unable to pay said filing fees or assessments or fail or refuse to pay said filing fees or assessments. * * * In setting filing fees and assessments at such unreasonable and outrageously high level, and permitting some candidates to file * * * by merely paying a fixed fee, or for State Legislator, the fee of $150.00, the statutes in question * * *. deprive the plaintiff and all other persons similarly situated, of rights, privileges and

> immunities secured by the equal protection and due process clauses of the 14th Amendment, and the freedom of assembly clause of the First Amendment * * * and establishes an invidious classification discrimination * * * [Plaintiff] are deprived of their right to seek nominations to public office, to seek public office, and to the right to vote in the 1970 and in all future primary elections " ( A. 11-13, 17-19).

The intervenors alleged they desired to cast their votes in the 1970 primary and future primaries for the particular Appellee they support and for candidates of the class represented by said Appellees. However, intervenors could not so vote for the candidates of their choice because they were poor persons unable or unwilling to pay the filing fees assessed against their candidates who by reason of their economic background can best represent intervenors' political views and economic interest ( A. 85-87 ).

The precinct offices referred to in the above Texas Election Code Statute are justice of the peace and county commissioners. County offices include County Clerk, County Treasurer, County Surveyor, County Courts at Law and County Judge, while district offices cover district courts, district attorney and district clerk. These statutes treat Justice of the Court of Civil Appeals, State Board of Education, State Senator and State Representative in various ways. United

States Senators and Representatives are also treated in various ways in regard to filing fees and assessments. State offices include governor, lieutenant governor, attorney general, state treasurer, commissioners of general land office, state comptroller, supreme court judges, court of criminal appeals judges, state agriculture commissioner, state railroad commissioners. ( A. 121-140).

It was stipulated that Appellee Pate meets all qualifications to be a candidate in the Democratic Primary Election for the office of County commissioner ( A. 109 ). Pate timely filed his application accompanied by the required $50 deposit for a place on the May 2, 1970 Democratic Party primary ballot as a candidate for county commissioner ( A. 111). The three judge court in their opinion below erroneously stated that Appellee Pate could not pay the $50 deposit ( A. 147 ). The El Paso Democratic Executive Committee assessed candidates in the said primary seventeen percent of assessed salary for the office for which they sought election, except where a fixed fee was set by state statute ( A. 110, 121 ). Pate was assessed $1,424.60 as a filing fee to be a candidate for County Commissioner ( A. 110) Pate could not pay said assessment and the Appellant McAlmon refused to place Pate's name on the ballot for the May 2, 1970 primary ( A. 111, 112 ). Pate was relieved from payment of the said assessment by the Court below and ran in the May 2, 1970 primary election ( A. 112 ). Pate lost said primary election, but was endorsed in said election by one of the two major newspapers in

El Paso, Texas and received a total of 3,060 votes out of a total of 10,685 votes cast, while the incumbent received 6,013 and a third candidate received 1,612 votes (A.112). Pate is an announced and prospective candidate for County Commissioner in future elections and will be unable to or will refuse to pay future filing fees and assessments (A.112,113). Appellee Carter is a future candidate for state-wide commissioners of general land office and unable to pay the fixed filing fee of $1,000. (A.113-114) Appellee Wischkaemper was a candidate for county judge in Tarrant County, Texas who could not pay $6,300 fee assessed for that office (A.116-118). He will be a candidate in future elections for county judge and will be unable to pay the assessment (A.117-118). Each intervenor is a voter unable to vote for the Appellees and their class because of their inability to pay their candidate filing fees and assessments (A. 114-115-,119).

In Texas a person cannot have his name placed upon a primary election ballot unless he pays the filing fee and assessment made by the county executive committee or state executive committee of the political party running the primary election. The fees and assessments collected by the county executive committee are the only source of revenue for operating the primary. These costs include the printing of the official ballots, renting polling places, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks, and

all other necessary expense of holding the general and second primary and 5 percent of these expenses are given as compensation to the chairman and secretary of the committee. Articles 13.08 and 13.18 Texas Election Code. Any funds in excess of election expenses are refunded to the candidates who made payments to the county executive committee. Those candidates for state offices such as governor who pay a fixed filing fee and no assessments to the state executive committee receive no refund and their fees are for the exclusive use of the State Executive Committee (A.109-113).

There are two hundred and fifty-four counties in Texas. The Attorney General of Texas obtained information on the assessment of candidates in the democratic primary in 58 of these counties and such was made a part of the record as a stipulation (A.116). Due to the high cost of printing of the single appendix, Appellees could not pay for the complete printing of this information. The single appendix contains information on 18 different counties (A.121-139). This information reflects that a justice of the peace in El Paso County was assessed $3,862.40 while another justice of the peace was assessed $1,656.88. In this same county a district judge was assessed $4,063.00 and a state representative paid a fixed fee of $150.00 (A.12).

The following table shows a sample of assessments made against candidates in various counties in the 1970 Texas Democratic Primary Elections: ( A.122-134 )

1970 Democratic Primary Assessments

| County | District Judge | County Judge | County Comm. |
|---|---|---|---|
| Travis | $4,860 | $3,204 | $1,171.89 |
| McLennon | 3,405 | 2,160 | 1,789.00 |
| Wichita | 2,954 | ----- | 1,320.00 |
| Smith | 2,400 | 2,484 | 1,560.00 |
| Grayson | ----- | 2,082 | 1,605.81 |
| Denton | 1,400 | 777 | 777.00 |
| Chambers | 1,050 | 973 | 675.00 |
| Motley | 50 | 100 | 50.00 |
| Carson | ----- | 476 | 423.00 |
| Ward | ----- | 6,250 | 6,250.00 |
| Dallas | 6,720 | 6,480 | 5,520.00 |
| Bexar | 7,840 | 6,300 | 4,200.00 |
| Tarrant | 8,900 | 6,300 | 6,100.00 |

The following table reflects a sample of the assessed salary for various public offices in the 1970 Texas Democratic Primary.

1970 Salaries Elected Public Officers

| County | District Judge | County Judge | County Comm. |
|---|---|---|---|
| El Paso | $23,900 | $14,400 | $8,380 |
| Travis | 27,000 | 13,480 | 12,500 |
| McLennan | 22,700 | 14,400 | 13,428 |
| Wichita | 24,620 | ------ | 13,200 |
| Smith | 26,00 | 20,700 | 13,000 |

| | | | |
|---|---|---|---|
| Grayson | ---- | 12,230 | 9,432 |
| Denton | 20,000 | 12,000 | 12,000 |
| Chambers | 21,000 | 9,734 | 6,758 |
| Motley | ---- | 6,146 | 1,800 |
| Carson | ---- | 7,944 | 7,062 |
| Ward | ---- | 8,160 | 6,270 |
| Dallas | 28,000 | 27,000 | 23,000 |
| Bexar | 28,000 | 22,500 | 12,000 |

The salaries of state elected officers range from $55,000 for governor of Texas to $14,800 for the lieutenant governor ( A. 140 ).

The Court below, in its opinion and judgment, has declared the challenged provisions of the Texas Election Code unconstitutional because they infringe upon the exercise of voting and associational rights without any compelling state justification in violation of the First and Fourteenth Amendments ( A. 153 ).

## SUMMARY OF ARGUMENT

The merits of this case present Texas laws that have for 75 years required candidates in Texas Primary Elections to pay for the whole cost of running such elections.

May Texas condition the right to be a candidate and to vote upon wealth? NO. Any state interest in requiring candidates in primary elections to pay from $50 to $8,900 to finance the cost of the election is per se invidious discrimination. May the State require that candidates show voter support by obtaining money from voters to pay filing fees

and assessments? NO. Any state interest in requiring a candidate to ask his voter-supporters to contribute from $50 to $8,900 for filing fees is per se invidious discrimination.

The right to vote and freedom of association ( political associates ) for the purpose of voting and being nominated are destroyed by the Texas Primary Scheme for financing elections.

Texas has not explained why statewide candidates are not required to pay for any part of the cost of primary elections. These candidates pay a fixed fee of $1,000 to the state executive committee. And state legislators pay a fixed fee that is much less than their fair share of election costs. This aspect of the Texas election law is also per se invidious discrimination.

A poor person and a no so poor person under our constitution may be required to show a significant modicum of voter support by signatures on a petition, but he cannot be required to show support by asking voters or anyone else for $50 to $8,900 to pay a state compelled filing fee or assessment.

The alleged evils of state financed primary elections completely disappear when a reveiw of other state election systems show that these alleged evils do not materialize even when no fee is required.

## ARGUMENT

### I.

### THIS COURT CAN DISREGARD THE SHOTGUN BRIEF OF TEXAS AND AFFIRM, FOR THE TEXAS BRIEF DID NOT INCLUDE ANY "QUESTIONS PRESENTED FOR REVIEW" .

Without including any " questions presented for review" as required by Supreme Court Rule 40 (1) (d) (1) and 40 (1) (d) (2) Texas has filed a shotgun brief. In NEW HAVEN INCLUSION CASES, 399 U.S. 392, 481, n. 78, Justice Stewart has stated that " The Committee has not revived the issue in its brief, nor has it responded in its reply brief to the Government's contention that it has abandoned the claim. Accordingly, we do not consider the matter further" . J. I. CASE CO. v. BORAK, 377 U.S. 426 , 428-429 ( 1964 ). In BENITES v HAMPTON , 123 U.S. 519 ( 1887 ) the Court dismissed the case for failure of the brief to contain specifications of errors. PORTLAND CO. v UNITED STATES, 82 U.S. 1, 15 WALL. 1 ( 1873 ), RUSSELL v UNITED STATES, 369 U.S. 749, 754, n. 7 ( 1962 ); TRAVELERS HEALTH ASSN. v VIRGINIA , 339 U.S. 643, 651, n. 4 ( 1949 ) .

The brief of Texas clearly reflects that by way of argument an attempt has been made to present additional questions or to change the substance of the question presented in the Jurisdictional Statement. This Court's Rule 40 provides that questions not presented in accordance with paragraph

(1) (d) (2) of Rule 40 will be disregarded, unless plain error is noted. These additional arguments cannot be deemed to be subsidiary questions fairly comprised within the jurisdictional statement question presented. An example of the methods of Texas is found in their brief at page 9 when they request a re-examination of the SMITH v ALLWRIGHT, 321 U.S. 649 ( 1944 ), State Action Rule, notwithstadning such was not raised in their Jurisdictional Statement. The Court below held that "It is undisputed that primary elections of political parties are state action and subject to the Fourteenth Amendment." ( A. 148 ) .

Appellees are faced with a dilemma as to which issues raised in the Texas brief must be answered. Indeed, this is the reason why a brief must contain "questions presented for review". A proper solution would be for this Court to affirm upon the opinion below where Appellees had a fair opportunity to reply to the contentions of Texas.

It is obvious that with the amendment of Texas Election Code Articles 13.07a, 13.08, 13.08a, 13.08a-1, 13.16, Texas has taken the first step to evade the lower federal court decisions in order to defeat federal constitutional rights of voters and candidates in primary elections. The next step may have been the omission of any "questions presented" in their brief before this Court. Therefore, appellees shall answer every issue raised by the argument of Texas. Notwithstanding

the foregoing, it is urged that this Court affirm the judgment of the lower court in order to establish a solid precedent in this important area of law.

In the event this Court does not give a difinitive answer by a memorandum affirmance of the judgment below, or by a written opinion, then judicial time has been wasted and future litigation concerning the same situation will appear shortly. Justice dictates that this Court render a decision on the merits now so that in the next primary election, Texas and citizen-voters of Texas will know whether candidates can be forced to pay the complete cost of primary elections in Texas.

II.

THE CONTINGENT AND TEMPORARY AMENDMENT OF PART OF THE TEXAS ELECTION CODE HELD UNCONSTITUTIONAL BELOW DOES NOT MAKE THIS APPEAL MOOT.

The Texas Legislature by H.B. 5 Special Call Session, 62nd Legislature, ( June 4, 1971 ) Amended Articles 13.07a, 13.08, 13.08a, 13.08a-1 and 13.16, Texas Election Code. However, these amendments were contingent upon this Court's action in the case at bar and such amendments are temporary in nature. Section 7 of H.B. 5 supra, concerning the contingent and

and temporary nature of the Texas Election Code Amendments is set out below.

Sec. 7 (a) This Act is enacted as a contingent, temporary law, to become effective only as stated in Subsection ( b) of this section; and if it does become effective, it expires on December 31, 1972.

(b) This Act becomes effective only upon the condition that, before January 1, 1972:

(1) The Supreme Court of the United States does not dispose of the appeal filed in that court from the judgment of the United States District Court for the Northern District of Texas, Dallas Division, in Civil Action No. CA 3-3635-C, styled Van Phillip Carter v. Martin Dies, Jr., et al, by action which becomes final before January 1, 1972; or

(2) the Supreme Court of the United States affirms or refuses to review the judgment of the district court in the aforesaid case, or by other action taken upon an appeal of that case the Supreme Court rules that either of the following sections of the Texas Election Code as they exist before the amendments made by this Act violates the Constitution of the United States: Sections 185a, 186, 186a, 193, and 194.

(c) Not later than January 5, 1972, the Attorney General of Texas shall certify to the Governor and to the Secretary of State whether either of the two conditions stated in Subsection ( b ) has been fulfilled, and the Governor immediately shall issue his

proclamation declaring whether this Act becomes effective. If either of the conditions for effectiveness is fulfilled, the Act takes effect on the date of the Governor's proclamation.

(d) If this Act takes effect, upon its expiration on December 31, 1972, the law as it existed before the effective date of the Act again becomes operative until otherwise provided by the Legislature.

It is undisputed that each Appellee and class appellee herein will be either a candidate or voter in future Texas primary elections to include those to be held after December 31, 1972 ( A. 109-119, 148 ) and they cannot and will not pay the filing fees and assessments required of candidates in such Texas Primary elections. Furthermore, this is a class action brought by prospective candidates and voters who could not pay filing fees and assessments in 1970 and their class will not be able to pay these unconstitutional fees and assessments in future Texas primary elections. In light of these facts, no mootness appears.

The burden of the Election Statutes declared unconstitutional remains for elections to be held after December 15, 1972, except Article 13.15, Texas Election Code was not amended. These statutes will be effective in the future. In MOORE v OGILVIE 394 U.S. 814 ( 1969 ) Justice Douglas wrote that " But while the 1968 election is over, the burden which MacDougall v. Green, supra,

allowed to be placed in the nomination of candidates for statewide offices remains and controls future elections. * * *. The problem is therefore 'capable of repetition, yet evading review', Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U.S. 498 " and this Court turned to the merits." WHITCOMB v. CHAVEZ, __U.S.__ ( decided June 7, 1971).

It is urged that this Court now turn to the merits of the case at bar.

III.

THE TEXAS ELECTION SCHEME FOR FINANCING PRIMARY ELECTIONS IS UNCONSTITUTIONAL UNDER ANY CONSTITUTIONAL STANDARD APPLIED TO EITHER CANDIDATES OR VOTERS.

The Texas Classification of candidates by the length of their pocket books alone as the yardstick of whether their names appear or do not appear on the primary ballot is unconstitutional under the First and Fourteenth Amendments and cannot be saved by Texas as a means to control and limit the ballot.

The Texas Election Code creates by State Action a favored group of citizens ( rich candidates and rich voters ) and the grant to them of preferred political rights in primary elections is the worst of all discriminations under a democratic system of government. Constitutional rights extend to primary elections where such are

an integral part of the procedure of choosing elected public officials and in Texas democratic primaries effectively control the choice, ( A. 156 ). There is more to the right to vote than the right to pull a lever on a voting machine, or to mark a piece of paper as a ballot.

Federally protected rights suffer, for the favored group has full voting strength by reason of their wealth. There is no restriction on the primary ballot, except office qualifications, other than wealth. In other words, any person otherwise qualified can place his name on the ballot by financing the cost of the election. The groups not in favor and unable to pay, have their votes destroyed when a candidate without wealth is not permitted to be a primary candidate.

In JENNESS v FORTSON, __U.S.__ 29 L.Ed. 2d 554,562, decided June 21, 1971, this Court held "there is an important state interest in requiring some preliminary showing of a significant modicum ( a little ) of support before printing the name of a political organization and its candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election", and "the fact is that there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other" for "sometimes the grossest discrimination can lie in treating things that are different

as though they were exactly alike * * *." Is a candidate and his supporters-voters showing merely a "significant modicum (a little ) of support" before printing the name on a primary ballot by paying an assessment of $8,900? ( This brief, pages 12-13 ). Are there obvious differences in kind for democratic purposes between the needs and potentials of wealthy democratic primary candidates and voters, on the one hand, and not wealthy democratic primary candidates and voters on the other? NO. The record ( A.121-138; This Brief, pages 12-14 ) herein reflects that a democratic candidate in a Texas primary must make a preliminary showing of a significant personal wealth or by willing and wealthy supporters before his name is printed on a primary ballot. And this showing is based significantly on the length of pocket books alone. There are no nominating petitions or write-in candidates in Texas Primaries ( H.B. 5, supra, not considered applicable here ). This showing of support in the primary requirements range from $1,424.60 for county commissioner in El Paso County, to $5,520 in Dallas County and from $3,862.40 for justice of the peace, precinct 7, in El Paso County, to $4,320.00 in precinct 1 of Dallas County ( A.121,133 ). Indeed, a primary county clerk candidate was assessed $2,448 in El Paso County in 1970 ( A.121) and in Tarrant County he was assessed $6,300 ( A. 135 ). Under the Texas Primary Election Scheme the stigma involved in being rich is that your wealth ipso facto gives you a "significant modicum of support" and a place on the primary ballot while the stigma of not being wealthy ipso facto gives

you no "significant modicum of support".

In the 1970 democratic primary election in El Paso County, Texas, there were three candidates for County Commissioner of Precinct Four. Each candidate was assessed $1,424.60 to pay for the cost of the election ( A. 110, 112, 121-122 ) . The incumbent and a third candidate in said election paid the $1,424.60 assessment and Appellee Pate was relieved from this payment by the Court below ( A. 106-107). The third candidate in said election ipso facto had his name placed on the ballot by payment of $1,424.60 and received 1,612 votes. Appellee Pate had no ipso facto support by wealth and was unable to pay this assessment and after the April 3, 1970 order of the Court below placing him on the ballot, was able to obtain an endorsement in the democratic primary election of May 2, 1970 by one of the two major newspapers in El Paso, Texas and 3,060 votes in said election out of a total of 10,685 votes cast ( A. 112 ).

Texas admits "that a man's wealth has little to do with his qualifications to hold public office" ( Texas Brief p. 9 ). (Emphasis added ) Under the democratic process and system, a mans wealth has no relationship to his qualifications to hold public office. Then Texas asserts that "a poor man * * * does not have to run in a party primary". ( Texas Brief pp. 9-10 ) Yet, in the overwhelming majority of Texas political offices, nominations by the Democratic Party is tantamount to election, it is clear that

restrictions on entry into the ( democratic ) primary may significantly impair the right to cast one's vote effectively". ( Thornberry, Circuit Judge, concurring specially in court below, A. 156 ). " Texas, open to economic initiative and technical innovation as are few places on earth, changes at a dizzy pace, but its politics remain old-fashioned, the politics of a one-party state resisting outside influence and rejecting northern preoccupations", WILL TEXAS VOTE? 237 The Economist 44 ( October 31, 1970, number 6636 ). Then Texas endorses the methods of "democratic counties" under communist rule with the position that "no voter is fenced out of the voting booth by the filing fee requirement. The filing fee simply limits the person for whom the voter may cast his ballot". ( Texas Brief, p. 13) ( Emphasis added )

Appellants urge that "this case is about fees and political party primaries, and whether two men: one rich and one poor, are being treated equally, or whether there is invidious discrimination" ( Texas Brief, p. 14 ) and that stability of our country is due primarily to the two party system ( Texas Brief, p. 17 ) for any other system will contribute to the breakdown of such stability. Then they complain that the lower court's decision has placed the burden of financing primary elections upon the taxpayers-voters ( Texas Brief, p. 18-19). What other burden should a free country meet first than to finance the primary, general and special elections that makes it a free country! Texas then says that the lower court decision will insure a large list of candidates and that

this is bad. It is difficult to understand how the competition that Appellee Pate gave to the incumbent was bad (A. 112-113).
And Appellee Pate came in second in a three way race with 3,060 votes out of 10,685 votes cast, but he did not have "sufficient support to raise the filing fee" from wealthy voters ( $1,424.60 ) and therefore "he does not need to be a candidate" (Texas Brief p. 19 ).
Texas your millionaires can run for office in primary elections, but 99 percent of your citizens-voters could not pay up to $8,900 cash for a district judgeship or $5,520 for a seat as a county commissioner (A. 133-135 ).
Texas, many of your elected officials must look to the wealthy to pay their filing fees and assessments and the resulting charge of corruption can be heard on radio and television and read in the paper everyday as of late.
Texas, you finance your great university, your school, your tremendous highway system, why do you fight the financing of the most essential duty of government, when you know that the primary elections, in the most part, are tantamount to election.

It is claimed that Texas political parties regulate the size of their primaries by the statute under attack ( Texas Brief p. 20 ). This is not true, it is State Action based upon wealth that regulates primaries through a wealth classification. "The interests to be viewed and weighed and balanced are those of an indigent who cannot afford filing fees, as opposed to the added work and potential litigation that is created by * * * a petition." ( Texas Brief p. 21 ) (Emphasis added ) Are

candidates and voters who cannot pay fees and assessments of up to $8,900 ( A. 121-139, 158 ) indigents? No. Nothing lese need be said. Nor do all persons without wealth break the law. ( Texas Brief p. 21 )

The Appellant's Brief continues with the assertion that men without money for a filing fee and assessment are not defeated in elections, but that such is " a relevant question as far as access to the ballot is concerned." ( Texas Brief p. 21-22).
Then Texas urges that "as long as a poor man, ( one who cannot pay up to $8,900) has a reasonable opportunity to get on the ballot in November ( as an independent candidate), the fact that he cannot get on the party's primary ballot, because he cannot pay the filing fee (up to $8,900) does not invidiously discriminate against the poor man." (Texas Brief, p. 22 ) ( Emphasis added ). " In the case at Bar, those against whom the law discriminates can vote, they just cannot get their own candidate on the ballot." ( Texas Brief p. 22 ) ( Emphasis Added). The case at bar is settled for Texas admits that the "law discriminates". An intentional or purposeful discrimination has been shown and admitted and under SNOWDEN v. HUGHES, 321 U.S. 1 ( 1943) the judgment below can be affirmed.

Yet, Texas argues there is no unconstitutionality for "a remote limitation on a particular voter ( the possibility that his candidate is not on the ballot ) is no reason to depart from this principal" of not stretching the equal protection clause. ( Texas Brief 27 ). In the 1970 Democratic Primary Election in El Paso County,

Texas 3,060 voters would have had "a remote limitation" on their right to vote for Pate and one of the two major newspapers in such county would have had "a remote limitation" placed on its freedom to endorse Pate for election in the primary (A. 112). Appellants will still urge that it is not unconstitutional to deny 3,060 voters freedom of choice at the primary ballot box or to deny a major newspaper an opportunity to endorse a candidate of their choice.

"Appellees * * * ( are denied) the opportunity to vote for candidates they might have liked to have seen on the ballot, but this differs drastically from an absolute denial of voting." ( Texas Brief p. 24 ). The above results are justified by Texas as reasonable and rational for they permit financing of primary elections completely by assessments against candidates and limit or control the number of people on the primary ballot. In order to accomplish the above objectives, the Texas Election Code Statutes challenged herein classify candidates by their wealth and there are even sub-classification for state representatives pay a fixed fee of $150, the govenor pays $1,000 while the actual cost of the elections are paid by local candidates such as a judge in Tarrant County, even if he is unopposed, must pay a $8,900 assessment. This statutory election scheme for financing primary elections results in double invidious classification for such permits unconstitutional classification between candidates as to the amount they must pay while some do not even have to pay for the election, but merely support the State Executive Committee with their fees. This primary election scheme is per se exorbitant, unreasonable, arbitrary,

capricious, irrelevant to the election process, and outrageously high. In effect, there is even discrimination between candidates, for local candidates have to pay for their share of the primary expenses while other candidates (statewide and legislative) pay no cost of the primary expense or are subsidized to a point of the absurd.

How can Texas in good faith urge that a $8,900 "filing fee as an initial step in entering a career based on public service in elective office is no more a form of invidious discrimination by wealth in the following of a career than the license fees required to engage in may business professions or union dues." (Texas Brief p. 29). Would this Court permit a $8,900 fee for a young attorney or doctor to obtain a license to enter their profession and require them to pay this fee again every two or four years. The initial step to being elected to a Texas office may well be a high filing fee, for once elected the high fees are paid for by those who seek to corrupt the incumbent. It is common knowledge that high filing fees and assessments stop competition in election and most elections go by default for there are no opponents running against incumbents. Yet these incumbents must still pay up to $8,900 cash as assessments.

The truth as to the intent and purpose of high filing fees was admitted by Texas on April 3, 1970 in the hearing on preliminary relief granted by the Court below. (A. 106-107). There Texas told the three-judge court below, (Tr. p. 50 April 3, 1970 hearing) that:

"Again as a practical matter, I have found that the Judges sort of, at least District Judges around El Paso rather like the high filing fees, it keeps the opponents out, that is a different side of the same question. But yes, that concerns me, because I think that it's not altogether fair to allow some people to run for State-wide offices and not pay their share, and another candidate to do so. But this is the means that the legislature has selected to pay and I think there is a box created about paying for the Democratic and Republican Primaries."

Texas will urge in its reply brief that the intent and purpose of the Election Code Statutes are not bad and how can Appellee say that the Texas Legislature and politicians would want to discriminate against persons without wealth in order to remain in office. It has long been the position of the Texas Attorney General's Office and Judges of Texas that "case is not *** tried under the Federal Constitution. This Defendant has been brought into this Court under the state laws, under the State Constitution. *** I took an oath to uphold this Constitution; not the Federal Constitution but the State Constitution". Foregoing is an excerpt from Estes v. Texas, 381 U.S. 536 (1965) and was a statement of a Texas Judge who paid high filing fees with the knowledge he would thereby eliminate most opponents from the start.

Texas placed in the record as a stipulation (A. 116) a letter from A. F. Edwards, Chairman, Democratic Executive Committee of

Wichita Falls, Texas. ( A. 127 ). Mr. Edwards taught government for 30 years and has been on the Wichita Falls Democratic Executive Committee for 40 years, chairman for six years. Mr. Edwards made the following statements in his letter:

> "For a long time, I have thought the assessments for the primary elections are unduly heavy, and tend to discourage those who can't afford it from running for office. * * * I have thought for a long time that the primaries should be paid for as are the general election ( by the State ), same election officials, for both primaries, giving the voter whichever ballot he wants * * *."

Mr. Edwards, you are congratulated for your candor and honesty. Texas needs more politicians of your caliber.

In order to keep the "poor man" off of the primary ballot in Texas, Appellants have alleged many state interests or justifications. These alleged state interests seem to be (1) to limit the size of primary ballots, ( 2 ) to provide political parties with a means of financing primary elections, ( 3 ) to keep taxpayers from paying for primary elections, (4) to ensure that persons are willing to sacrifice financially to be primary candidates, (5) to avoid voter confusion by controlling by wealth the number of people on the ballot, (6) to ensure the candidates have a significant financial modicum of support, and ( 7 ) to prevent third political parties as " stability of the governments of the English speaking

peoples of this world is due primarily to the fact that they have essentially two party system" ( Texas Brief, pp. 17-30 )

Texas points with pride to Article 13.50 et seq., Texas Election Code, as a means by which a person can get on the general ballot as an independent candidate . These statutes provide for a nominating petition from one per cent to three per cent and not to exceed five hundred in local elections. This so called lenient means has not caused voter confusion in Texas, because in Texas independent candidates do not win elections, so few persons file as independent candidates.

IV.

APPELLANT MARTINE DIES, JR. PRESENTED AN ELECTION CODE REPORT TO THE TEXAS LEGISLATURE THAT IS INCONSISTENT WITH MANY CONTENTIONS IN THE TEXAS BRIEF FILED HEREIN.

Appellant Dies is the Texas Secretary of State who is appointed by the Governor and he acts as the chief election officer in Texas. Article 4, Section 21, 1 Vernon's Texas Constitution 819.

Dies, as Texas Secretary of State, presented proposed election law changes to the 62nd Texas Legislature on December 10, 1970. This report was cited by the Court below ( A. 151, 158 ). Part of the report is set

forth in Appendix B herein. In the report, Dies admits in effect that filing fees assessed in some Texas counties in primary elections are exorbitant and recommends primary expenses be borne by the county and state ( Appendix B, this Brief, pp 60-61, 65 ).

This report reflects that no other state " with a similar population * * * placed the burden of holding and financing primary elections upon the participating political parties * * *", and, "* * * Texas has the highest primary filing fees in the nation. In fact, a survey of all of the states shows absolutely no state which has primary filing fees that even approach the levies in Texas. * * * It should be noted that excluding Texas, 6 percent of an annual salary is apparently the highest levy in the United States for primary filing fees for county and state officers. Most states charge 2 percent or less of the annual salary". ( Appendix B, this brief, pp. 58-61 ). The report shows that "District judges in Tarrant County were assessed approximately $8,900 in 1970. This figure represents about 30 percent of their annual salary " and " Extremely high filing fees sometimes have the effect of reducing the number of candidates who will file for nomination. When fewer candidates file for office, there is less money to operate the primaries. For instance, Harris County Democratic primaries in 1970 cost less than the primaries in 1968. Yet the assessments to the candidates were higher because fewer candidates filed for nomination " ( Appendix this Brief pp 60-61, 78 ).

The above report of the Texas Secretary of State is an admission by Appellants that the Texas scheme for financing primary elections is unconstitutional under any test. The Secretary of State did not tell the Texas Legislature that the system held unconstiby the Court below was good, rather he said it was bad. He never told the Texas Legislature that it was needed to limit and control the ballot and to avoid voter confusion, but he did recommend "that Texas adopt procedures making the operation of the primaries a state and county responsibility. This will allow the state and county government to share the cost of the primaries" ( Appendix B, this Brief p.65 ). The Secretary never said that state financial primaries would cause any of the problems asserted in the Brief of Texas or that any State interest would be served by the financing of primaries by candidate assessments.

The Attorney General of Texas, an elected office subject to paying the $1,000 fee required by Article 13.15, Texas Election Code, is the only person permitted under Texas law to represent Texas before this Court. Article 4, Section 22, 1 Texas Constitution Annotated 821. The Texas Attorney General is completely independent of the governor and secretary of state. Perhaps this is the reason that one arm of Texas government tells the Texas Legislature one thing and another independent arm of Texas tells this Court something else.

## V.

## THE SCHEME FOR FINANCING TEXAS PRIMARY ELECTIONS CONSTITUTES STATE ACTION.

In NIXON v HERNDON, 272 U.S. 536 (1927 ) a Texas statutory classification that prohibited negroes from participating in Democratic party primary elections was held to be unconstitutional under the Fourteenth Amendment for the same reason that a denial of a vote at a final election would be unconstitutional. Texas substituted a new statutory scheme permitting a party executive committee to prescribe who shall vote or otherwise participate in its primary election. The Texas Democratic party thereupon adopted a white-primary rule. This Court, speaking through Justice Cardozo, in NIXON v CONDON, 286 U.S. 73 ( 1932 ) held that the Texas Democratic Executive Committee was subject to restraints of the Constitution as representatives of Texas and the elimination of negroes from Democratic Party Primary elections, was an invidious discrimination in violation of equal protection of the law.

The landmark case of SMITH v ALLWRIGHT, 321 U.S. 649 ( 1944 ) held that a primary election in Texas was per se an integral part of the machinery for choosing officials. Consequently the primary electoral process is essentially a state function. In that case Justice Reed wrote that "it may now be taken as a postulate that the right to vote in such a primary for the nomination of candidates without discrimination by the State, like

the right to vote in a general election, is a right secured by the Constitution " .

In SMITH v ALLWRIGHT, supra, Justice Reed described the financing of Texas primary elections as follows:

> " The plan of the Texas primary follows substantially that of Louisiana, with the exception that in Louisiana the state pays the cost of the primary while Texas assesses the cost against candidates. In numerous instances, the Texas statutes fix or limit the fees to be charged. Whether paid directly by the state or through state requirements, it is state action which impels. When primaries become a part of the machinery for choosing officials, state and national, as they have here, the same tests to determine the character of discrimination as abridgment should be applied to the primary as are applied to the general election " .

The Texas election statutes held unconstitutional by the Court below provide the scheme for financing Texas primary elections as described by Justice Reed in the SMITH case in 1944.

Notwithstanding the foregoing, appellants in their brief at pages 9-10 request this Court to hold that filing fees and assessments paid through state requirements are not state

action as a poor man "does not have to run in a party primary". This argument is wrong and in fact has not been properly raised in this Court. ELMORE v RICE, 4 Cir. 1947, 165 F. 2d 387; BUSKIN v BROWN, 4 Cir. 1949, 174 F. 2d 391; TERRY v ADAMS, 345 U.S. 461 ( 1953 ).

In 1904, the Texas State Democratic Executive Committee issued a recommendation to the local party organization to the effect that the party authorities in all primaries permit all white Democrats to participate who would be qualified voters under the law at the succeeding general election. "The White Primary ", 8 Miss. Law J. 139. It was not until 1952 in TERRY v ADAMS, 345 U.S. 461 that this Court put a complete end to White Primary Elections in Texas. The Jaybird Party Association was organized in 1889. It took 62 years to put an end to its discrimination.

"James H. Booser has shown that the direct primary was first employed by the Democratic Party in Crawford County, Pennsylvania, in 1842"."The Direct Primary in Idaho " , Boyd A. Martin, Stanford University Press ( 1947 ) at page 10, call number 324. 237, M. 363 d, Texas enacted its first primary law on April 8, 1895 and it was known as the Terrell Election Laws. General Laws of Texas, Twenty-fourth Legislature ( 1895 ) chapter 46. It has now been 75 years that wealth has been required as a condition to candidacy in Texas. It is urged that this Court put a final end to wealth discrimination in Texas primary elections now.

## VI.

## TEXAS VIOLATED THE FIRST AND FOURTEENTH AMENDMENTS BY MAKING WEALTH AN ELECTORAL STANDARD FOR CANDIDATES AND VOTERS IN PRIMARY ELECTIONS.

The two correlative rights of any person, to become a candidate in a primary election and the right of voters to vote in such elections for whomsoever they choose, are at issue herein. The Appellants are here as representatives of persons in Texas who desire to remove the state barrier of wealth or affluence which restricts participating in the political process by those voters and candidates unable to pay from $50 to $8,900 as filing fees and assessments.

In HARPER v VIRGINIA BOARD OF ELECTIONS, 383 U.S. 663 ( 1966 ) this Court in striking down Virginia's poll tax, said:

> "We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classification which might invade or restrain them must be closely scrutinized and carefully confined [citation omitted] * * * the right to vote is too precious, too fundamental to be so burdened or conditioned." 383 U.S. 670.

Once Texas granted the electorate the franchise and the right to be candidates in primary elections, then classifications may not be drawn which are inconsistent with the First and Fourteenth Amendments, and "voters qualifications have no relation to wealth nor to paying or not paying this or any other tax." HARPER CASE, 383 U.S. at 666. UNITED STATES v TEXAS, 252 F. Supp. 234, 252 ( W.D. Tex. 1966 ); UNITED STATES v ALABAMA 252 F. Supp. 95 ( 1966 ). Texas filing fees and assessments are used to raise revenue and are considered a tax. CAMPBELL vs. DAVENPORT, 5 Cir. 1966, 362 F. 2d 624. Cf. Waples v. Marrost, Texas Supreme Court 1916, 184 S.W. 184, holding that the taxing power of Texas cannot be used to pay the expense of primary elections for such elections do not serve " a public purpose " .

Justice Douglas tells the true standard for testing the Texas Scheme for financing primary elections when he wrote in the HARPER case that:

> "But we must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed , or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race [citation omitted] are traditionally disfavored." 383 U.S. at 668.

Subsequent to the HARPER case three federal courts have held a requirement of paying a filing fee to qualify as a candidate in the electoral process is unconstitutional as a violation of Equal Protection. JENNESS v. LITTLE, N.D.Ga.1969, 306 F.Supp. 925; GEORGIA SOCIALIST WORKING PARTY v. FORTSON , N.D.Ga.1970, 315 F.Supp 1035, 1040,affirmed on other grounds JENNESS v. FORTSON, ___ U.S. __, 29 L.Ed. 2d 554. Filing fees as requirement to run for office have been held unconstitutional in BOLLINGER v. McLAUGHLIN, 22 S.D. 206, 116 N.W. 70 (1908 ); ADAIR v DREXEL, 74 Neb. 776, 105 N.W.174 ( 1905 ); KELSO v COOK 184 Ind. 173, 110 N.E. 987 ( 1916 ); LEDGERWOOD v PITTS, 122 Tenn. 570, 125 S.W. 1036 ( 1909 ).

In JENNESS v FORTSON _U.S._, 29 L.Ed. 2d 554 (1971 ) prospective candidates and their voter-supporters brought an action based upon the First and Fourteenth Amendment to declare Georgia laws that require filing fees and a 5% nominating petition unconstitutional. The District Court in the JENNESS case, GEORGIA SOCIALIST WORKERS PARTY v. FORTSON 315 F.Supp. 1035 ( 1970 ) held that candidates and voters had standing to bring the suit. This Court in the JENNESS case decided the issues of the abridgement of "freedom of speech and association guaranteed to that candidate and his supporters by the First and Fourteenth Amendment" and violation of the "Fourteenth Amendment by denying the non-party candidate the equal protection of the law". It was held that 5%nominating petitions

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was constitutional and the state did not appeal the district court's holding that filing fee requirements of 5% of the annual salary operates to deny equal protection to prospective candidates. It is now clear, in light of the JENNESS case, that each appellee herein has standing under the First and Fourteenth Amendment in regards to their rights to run for state office and to vote in state elections. See ANDERSON v MARTIN, 375 U.S. 399 ( 1964 ) where a candidate in a school board election had standing under equal protection clause. SNOWDEN v HUGHES, 321 U.S.1 ( 1944) is dead in light of the JENNESS case.

In TURNER v FOUCHE, 396 U.S. 346, (1970), a class action by freeholders and non-freeholders challenging the limitation of schoolboard membership to freeholders as a violation of the Equal Protection Clause, Justice Stewart wrote that "challenged classification rests on grounds wholly irrelevant to the achievement of a void state objection "and "appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidious discrimination qualifications. The State may not deny some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees." Wealth is not a "compelling" state interest. KRAMER v UNION FREE SCHOOL DISTRICT, 395 U.S. 621 ( 1969 ) and CIPRIANO v CITY OF HOUMA, 375 U.S. 701 ( 1969 ).

A state may not consider fiscal matters to draw an invidious distinction between classes of its citizens. SHAPIRO v THOMPSON, 394 U.S. 618 ( 1969 ) and a characterization of voting or candidacy for office as a "right" or a "privilege" does not decide constitutional rights. SHERBERT v. VERNER, 374 U.S. 398 ( 1963 ); GRAHAM v RICHARDSON _U.S._, 29 L.Ed. 2d 534 ( 1971 ).

In BODDIE v CONNECTICUT, decided March 2, 1971, _U.S._, due process required a "countervoiding state interest of overriding significance" before a poor person is denied access to a divorce court because he cannot pay a fee of $60. And a state's assertion that a fee is necessary as a cost recoupment has been rejected. GRIFFIN v ILLINOIS, 351 U.S. 12 ( 1956 ) and requiring indigents to pay a filing fee before a writ of habeas corpus could be considered , was invalid under the Equal Protection Clause. SMITH v BENNETT, 365 U.S. 708.

The state interest shown by significant modicum of voter support by means of signatures on a nominating petition, JENNESS v. FORTSON, __U.S.__, 29 L. Ed. 2d 554, 562 ( 1971) does not mean there is an important state interest shown by requiring that primary candidates pay for the complete cost of the election when Texas assessments range from $50 to $8,900 and some candidates merely pay a small fixed fee and the fixed fee of others does not go to finance the primary election at all, but rather finances the state political executive committee. The payment of a $8,900

assessment means that the candidate is wealthy or has wealthy supporters whether they be Texas voters, banks or a New York insurance company. A candidate need not pay money to obtain signatures as a form of support unless some other statute requires a notary fee for notarized signatures.

If this Court holds filing fees per se unconstitutional, the Appellees and their class will be protected from the type of State shenanigans ( H. B. 5, supra, requires a notarized petition signed by 10% of the voters and a pauper's oath ) under which the affluent qualify for election through the easy route ( for them ) of paying a filing fee while the poor or not so poor will be required as a condition of candidacy in the same primary election to meet other, onerous, requirements. The Texas 10% petition must be notarized and completed within 90 days with each signer becoming ineligible to thereafter affiliate with other parties.

In El Paso County in the last general election 27,315 persons voted for democratic governor. See Appendix C herein for the official vote for Texas governor in the 1970 General Election by counties. Therefore, a petition for any country-wide race in El Paso must contain 2,732 notarized signatures to qualify a poor candidate in the 1972 primary election and at a cost of $.50 for each oath administered and the notary fees would be $1,325.00 for such petition. Article 3945 V.A.T.S.; H.B. 5, supra. The 10% notarized petition resulting in a $1,325 cost is unconstitutional. See EVANS v. CORNMAN, 398 U.S.

419 ( 1970 ) ; PHOENIX v. KOLODZIEJSKI, 394 U.S. 204 ( 1970 ) on compelling state interest.

Furthermore, Texas law places an arbitrary restriction upon independent candidates in that they cannot obtain notarized signatures on their petitions until the primary elections are over and no one voting in a primary may sign the petition of an independent candidate. Article 13.50 et. sq. Texas Eleetion Code. See WILLIAMS v. RHODES, 393 U.S. 23 ( 1968 ).

While this Court does not sit to decide abstract questions, it is also true that the law is not a game. The legal resources available to Appellees' class are sorely limited. It would be equally unfortunate to dissipate these resources and to have unsettled constitutional questions raised here, thereby necessitating additional legal action to obtain relief for the 1972 primary elections. Therefore, Appellee Pate and Guzman, et al, join with the State in presenting H. B. 5, supra, for constitutional review by the Court.

There seems to be no real issue that Texas has created a classification that discriminates by wealth in regard to primary election. The real issue in whether that discrimination is justified by the State interest advanced by way of argument. It has long been argued that putting a price on the right to vote is bad for both negro and white voters. "Political machines for years have made a regular practice of buying blocks of Poll Tax receipts for their henchmen and herding them in to vote the will

of the political boss." The Poll Tax, American Council on Public Affairs, 1942, p. 6, Call Number 336.25 Am 35p. The effect of high filing fees is that many candidates are bought by wealth.

The State of Arizona has not experienced the evils raised by Texas in their brief against State financial primary elections. Article 7, Section 14 of the Arizona Constitution reads as follows:

> "No fee shall ever be required in order to have the name of any candidate placed on the official ballot for any election or primary."

Arizona does require a non-notarized nominating petition with voter signatures representing from one to five percent of the vote in the last election. Article 16-301 to 16-306, Arizona Revised Statutes.

## CONCLUSION

It is respectfully submitted that the three-judge district court below was correct in its conclusion that Texas Election Code Scheme for financing Primary Elections violated the First and Fourteenth Amendments and the judgment below should be affirmed. Furthermore, the new Texas legislation on primary elections ( H.B.5, Texas Brief pp. 33-42 ) violates the First and Fourteenth Amendments and to that end we urge this Court to declare said Texas enactment unconstitutional.

Respectfully submitted,

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## PROOF OF SERVICE

We, Joseph A. Calamia and John L. Fashing, two of the attorneys for the Appellees Pate and Guzman, et al, herein, and both members of the Bar of the Supreme Court of the United States, do hereby certify that on the 30th day of August, 1971, we served copies of the foregoing Appellees' Brief on the following attorneys of record for the appellants, to wit: Pat Bailey, Assistant Attorney General, P. O. Box 12548, Capitol Station, Austin, Texas 78711, Charles F. Herring and John F. Morehead, 906 Perry Brooks Building, Austin, Texas 78701; Estil Vance, Jr., 1800 First National Bank Bldg., Fort Worth, Texas 76102; Mark F. Howell, 508 Southwest National Bank Building, El Paso, Texas 79901, by Air Mail and First class postage prepaid.

## APPENDIX "A"

**Art. 13.07a Deposit to accompany application for place on ballot**

(1) Every candidate for public office who is subject to assessment by the county executive committee for a portion of the expenses of holding the primary election, except candidates for the Legislature and for the State Board of Education, shall pay to the county chairman, at the time of filing his application for a place on the ballot, a deposit of fifty dollars. In case of district offices in districts containing more than one county or part thereof, the candidate shall pay a deposit of fifty dollars to each county chairman with whom his application is filed. A candidate for the Legislature shall pay to the county chairman, at the time of filing his application, a deposit in the amount of the maximum which he may be assessed in that county, or the amount of the filing fee in that county in cases where a fixed fee is prescribed. A candidate for the State Board of Education shall pay to each county chairman, at the time of filing his application, the quotient obtained upon dividing fifty dollars by the number of counties in the district in which he is a candidate. The fees and deposits accompanying the applications shall become a part of the primary fund.

(2) After the county executive committee makes the assessments provided for in Section 186 of this code,[1] it shall refund to each candidate within thirty days thereafter the amount of the payment in excess of the assessment against the candidate if the deposit exceeds the assessment. If the deposit does not exceed the assessment, the balance due on the assessment shall be paid as provided in Section 186.[1]

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[1] Article 13.08.

Amended by Acts 1967, 60th Leg., p. 1909, ch. 723, § 41, eff. Aug. 28, 1967.

Art. 13.08 Expenses of primary

(1) Prior to the assessment of the candidates, the county committee shall carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks, and all other necessary expenses of holding the general primary and second primary in such county and on the second Monday in February preceding each primary, shall apportion such cost in such manner as in their judgment is just and equitable among the various candidates for nomination for district, county, and precinct offices only as herein defined, except the offices of Justice of the Court of Civil Appeals and member of the State Board of Education, and except the office of state senator and state representative if the assessment or fee payable to the county chairman is fixed at a definite amount, but taking into account the assessments and filing fees received from candidates for the Legislature and the State Board of Education. Where a district office covers more than one county, the assessment of such candidate by the county shall be not more than a sum which is the quotient of the amount which he would be assessed if he represented only one county determined by the formula used to assess county candidates, when divided by the number of counties in his district. In making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made. Within 24 hours after adjournment of the meeting, the chairman shall mail to each person

against whom an assessment is made a notice stating the amount of such expenses apportioned to him and informing him that the difference between the amount of the assessment and the amount of the deposit which accompanied the candidate's application must be paid to the chairman on or before the fourth Monday in February; and no person's name shall be placed on the ballot unless he pays the assessment within the prescribed time. The notices shall be sent to the candidates by registered or certified mail, and the chairman shall obtain a receipt for each letter, postmarked by the post office at which the letter is mailed, as evidence of the mailing, and shall preserve the receipts for a period of three months.

(2) A candidate filing after the date of the aforesaid meeting shall not be required to accompany his application with the deposit provided for in Section 185a of this code,[1] but shall pay the full amount assessed against him by the county executive committee within one week from the date on which his application is filed; provided, however, that where a fixed filing fee is required for an office included in this section, the amount of the fee must accompany the application.

(3) It shall be sufficient to meet the requirements of this law to mail by registered or certified letter to the chairman before the deadline herein provided, as shown by the postmark on the letter, a money order, a certified check, or a cashier's check; but it shall not be sufficient to make the payment by any other type of mail unless it is delivered before the deadline.

(4) A candidate for the State Board of Education shall pay a filing fee of fifty dollars, which shall be prorated equally among the counties comprising the

[1] Article 13.07a.

district in which he is a candidate, and the prorated amount shall be paid to each county chairman at the time the candidate files his application for a place on the ballot.

Amended by Acts 1967, 60th Leg., p. 1910, ch. 723, § 42, eff. Aug. 28, 1967.

Art. 1308a. Assessment of candidates in counties having certain populations

Candidates for any precinct, county or district office and the office of Congress in counties which have a population of one million (1,000,000) or more, according to the last preceding Federal Census, except candidates for the State Legislature and State Board of Education, shall not be assessed a sum in excess of ten percent (10%) of the aggregate annual salary provided for any office of two-year terms, and fifteen percent (15%) of the aggregate annual salary provided for any office of four-year terms, to have their names placed on the ballot in any primary election. Candidates for the State Board of Education shall not be assessed a sum in excess of the amount stated in Section 186 of this Code.[1]

Notwithstanding other provisions of law, the county executive committee in any county which has a population of one million (1,000,000) or more, according to the last preceding Federal Census, may require candidates for State Representative to pay an amount not exceeding Five Hundred Dollars ($500) to have their names placed upon the ballot in a primary election. A candidate for nomination for State Senator shall pay the full amount of One Thousand Dollars ($1,000) as filing fee for office of State Senator to have his name

[1] Article 13.08.

placed upon the ballot in a primary election at the time he files his application for a place on the ballot. The payment must accompany the application and must be in the form of cash, money order, cashier's check or certified check. The application and payment must be delivered to the proper party chairman or secretary by the deadline for making application for a place on the ballot, and it shall not be sufficient for the application and payment to have been mailed before the deadline unless they are actually delivered by the deadline. After the county executive committee makes the assessments as provided in Section 186 of this Code, it shall refund to each candidate within thirty (30) days thereafter the amount of the payment in excess of the assessment against the candidate.

Notwithstanding other provisions of law, the county executive committee in any county which has a population of nine hundred thousand (900,000) to one million (1,000,000), according to the last preceding Federal Census, shall require candidates for State Senator or State Representative to pay the amount of Three Hundred Dollars ($300) to have their names placed upon the ballot in a primary election.

Notwithstanding other provisions of law, the county executive committee in any county which has a population of six hundred fifty thousand (650,000) to nine hundred thousand (900,000), according to the last preceding Federal Census, shall require candidates for State Senator to pay the amount of One Thousand Dollars ($1,000) and candidates for State Representative to pay the amount of Six Hundred Dollars ($600) respectively to have their names placed upon the ballot in a primary election; however, if part of such a county is joined to two (2) or more other counties to comprise a senatorial district, the county executive com-

mittee shall require candidates for State Senator of that senatorial district to pay the amount of Two Hundred Fifty Dollars ($250) to have their names placed upon the ballot in a primary election; and such payment must accompany the application and must be in the form of cash, money order, cashier's check, or certified check and which shall in no event be refunded in whole or in part except in case of the death of the applicant before the primary election. Any person making a refund or participating in making a refund in violation of the provisions of this paragraph is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than ninety (90) days or by a fine of not more than Five Hundred Dollars ($500) or by both.

In any State Representative District consisting of eight (8) and not more than nine (9) counties, the chairmen of the county executive committees shall require candidates for State Representative to pay an amount of Twenty-five Dollars ($25) for each of the counties in said Representative District, to have their names placed upon the ballot in a primary election.

Amended by Acts 1969, 61st Leg., p. 2275, ch. 766, § 1, eff. Sept. 1, 1969.

Art. 13.15. Filing fees for certain offices

Candidates for United States Senator and all those who are candidates for state offices to be voted upon by the qualified voters of the whole state shall pay to the chairman of the state executive committee $1,000. Candidates for Congressman-at-large or for justice of the court of civil appeals shall pay to the chairman of the state executive committee five percent of one year's salary. A candidate who is required to pay a filing fee as herein provided shall not be required to pay any

other sum to any other person or committee to have his name placed on the ballot as such candidate. Payment of the fee herein required must be made at the time the candidate files his application for a place on the ballot, and the name of no person who is required to pay a filing fee in any place or to the chairman of the state executive committee shall be placed on the ballot unless he has paid the fee in accordance with these provisions.

Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 31, eff. Sept. 1, 1969.

Art. 13.16. Payments by candidates for state senator or representative

Subdivision 1. Except as otherwise provided in this code, no candidate for nomination for state senator shall be required to pay to the county executive committee to have his name placed on the primary ballot more than the following amounts:

1. One dollar per county for counties having a population of less than 5,000.

2. Five dollars per county for counties having a population of 5,000 and not more than 10,000.

3. Ten dollars per county for counties having a popplation of more than 10,000 and less than 40,000.

4. Fifty dollars per county for counties having a population of 40,000 and not more than 125,000.

5. Seventy-five dollars per county for counties having a population of more than 125,000 and not more than 200,000.

6. One hundred dollars per county for counties having a population of more than 200,000.

7. One hundred dollars per county for all senatorial districts composed of no more and no less than two counties, regardless of the population of such counties.

The population in each case is to be determined by the last preceding federal census.

Subdivision 2. Except as otherwise provided in this code, each candidate for nomination for state representative shall pay a filing fee of $150. In districts containing all or part of more than one county, the filing fee shall be prorated among the counties comprising the district on the basis of the percentage of the population of the district residing in each county, as determined by the last preceding federal census. The chairman of the state executive committee of each political party which is holding a primary election shall compute the prorations and shall forward to the chairman of each county executive committee of that party the pertinent information for his county not later than the first day of December preceding the election year.

Subdivision 3. Where some other section of this code provides for an assessment or filing fee at variance with this section, the special provision of the other section shall control.

Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 32, eff. Sept. 1, 1969.

APPENDIX "B"

# OFFICE OF THE SECRETARY OF STATE

## PROPOSED ELECTION LAW CHANGES

## A REPORT TO THE 52ND LEGISLATURE
## OF THE STATE OF TEXAS

# TABLE OF CONTENTS

1. INTRODUCTION

2. PRIMARY ELECTIONS

3. VOTER REGISTRATION

4. OTHER RECOMMENDED AMENDMENTS

STATE OF TEXAS
OFFICE OF THE SECRETARY OF STATE
AUSTIN, TEXAS 78711

Martin Dies Jr.
SECRETARY OF STATE

W. O. Bowers III
ASST. SECRETARY OF STATE

To The 62nd Legislature:

Our state now ranks fourth in the nation in population. This growth has put great strains in our election procedures that once worked well in a rural state. During my tenure as Secretary of State, I have observed areas of our present election process that are now failing to fulfill the needs of the state. Also, some of our present election laws have been challenged in the courts. If the challenges are successful, many changes will have to be made by the 62nd Legislature as we will be unable to hold primary elections or register voters until the changes are adopted.

In this report, I address myself to the areas that deserve immediate attention, primary elections and voter registration. As the chief election officer of the State of Texas, I have made studies of the present system in this state and in many other states with comparable populations. The recommendations made reflect procedures which are now being used in other states with great efficiency and accuracy.

I believe Texas must soon adopt new procedures in regard to the operation of our primaries and the method of registering voters. Hopefully, the information contained in this report will be of help to the 62nd Legislature when it considers election law reform.

MARTIN DIES, JR.
Secretary of State

## PRIMARY ELECTIONS

The Texas primary election process is unique among the major states in the nation. A vast majority of the states and all of the populous states that hold primaries operate their primaries in a manner similar to their general elections. This office did not encounter a single state with a similar population which placed the burden of holding and financing primary elections upon the participating political parties.

However, the need for change in Texas' primary system does not stem from the fact that Texas is the only state in the nation utilizing party operated primaries. This office does not believe that uniqueness is bad or that popularity is necessarily good. The present Texas system has simply reached a crisis in its operation that cannot be cured by slightly altering our present procedures. There are three factors that make operation of future primaries under our present system impractical if not impossible. These factors are as follows: the failure of the present system to provide adequate financing; the present filing fees cannot be increased to cover the need for funds; and the courts are very likely to strike down the entire primary assessment procedure. A discussion of

these factors follows.

(1). The present method of financing our primaries is no longer providing adequate funds for the proper operation of modern elections. Counties with large populations have now reached their statutory limits on assessments. The Democratic County Chairmen in Harris and Dallas counties have informed this office that they cannot finance another primary with the existing limitations on assessments. (See Appendix "C") In some instances, we have already noted a tendency for some party county committees to attempt to reduce the number of voting boxes because of their inability to pay for additional staff and equipment. This is not a reflection upon those county committees, but an indication that present financing is inadequate. Some primaries held in counties where voting machines are normally used are being held with paper ballots because of the extra expense of voting machines.

These changes are not healthy for Texas' elections. Combining voting precincts sometimes means long lines at polling places which discourage voters and alienate election workers. Voting on paper ballots in one precinct while other precincts are using voting machines creates difficulty for the voter and for election officials. Election officials in highly populated voting precincts simply cannot count

the paper ballots in a reasonable time with reasonable accuracy without hiring extra employees which are costly and many times inexperienced.

(2) Filing fees are already at maximum levels. The problem of election costs could be relieved somewhat by removing the limitations on assessments for candidates. This avenue might be feasible if it were not for the fact that at present Texas has the highest primary filing fees in the nation. In fact, a survey of all of the states shows absolutely no state which has primary filing fees that even approach the levies in Texas. Attached in Appendix "A" is a schedule of filing fees for county and state offices in other states. It should be noted that excluding Texas, 6 percent of an annual salary is apparently the highest levy in the United States for primary filing fees for county and state offices. Most states charge 2 percent or less of the annual salary.

Present assessments in Texas' metropolitan areas are now in the range of 20 to 30 percent of the annual salary of the office. Even after distribution of the surplus funds, if any, many county and district officials paid 20 percent or more of their annual salary in filing fees. District judges in Tarrant County were assessed approximately $8,900 in 1970. This figure represents about 30 percent of their annual salary.

Raising the assessments would not solve the problem. The expenses of a primary election vary proportionately with the number of voters. The number of candidates in each race has relatively little effect on overall expenditures. Extremely high filing fees sometimes have the effect of reducing the number of candidates who will file for nomination. When fewer candidates file for office, there is less money to operate the primaries. For instance, Harris County Democratic primaries in 1970 cost less than the primaries in 1968. Yet the assessments to the candidates were higher because fewer candidates filed for nomination.

(3) The most important factor is that of the questionable constitutionality of Texas' primary assessment system. Suits were filed in Federal District Courts prior to the 1970 primary elections claiming the fees made it impossible for a man of modest means to run for county office. A three judge federal panel in Dallas ordered the names of three candidates be placed on the ballot without paying the filing fees. The court will soon deliver a final opinion in the matter. Considering previous federal cases in other states and the prior ruling of this federal panel, it is most likely that the present filing fee system will be held unconstitutional. Such a ruling will make it impossible to operate another general primary under present law. However, the other fac-

tors discussed also make it imperative that some different route be taken in the financing and operation of Texas primaries. A short discussion of present primary operations is helpful in understanding what changes are needed.

## The Texas Primary Operation at Present

Presently the operations of the Texas primaries are almost entirely candidate financed. A statutory system of assessments allows the local county committees to estimate the cost of the primaries and assess most primary candidates some share of the cost. Some offices have fixed fees, but the candidates must bear all the election expenses in each county. Rural counties, where county salaries are low, assess between $400.00 and $800.00 for county offices. However, in metropolitan areas it is not uncommon to find assessments of over $4,000.00 for some offices. These figures contrast with the fixed fee of $1,000.00 for all statewide offices including United States Senator.

The assessment system is also subject to criticism because it is common for the original assessments to be inflated. There are few statutory limitations on the county committees and these officials are justifiably afraid of not having enough money to pay for the primary. These assessments must be partially refunded to the candidates later.

This procedure consumes a considerable amount of the county committee's time because the primary fund must be audited and all expenses must be paid before the refunds can be made. Disagreements between candidates and county committees are frequent, and many candidates feel that they were over-assessed because of the large refunds which in many instances are not returned until months after the primaries.

Finally, the party cannot retain any of the money in the primary fund. This practice leaves the local parties strapped for operating expenses. In many states this is not the case and those systems will be discussed later.

## Present Cost of Primaries

This office has made an extensive study of the present cost of the primaries. Attached in Appendix "B" is an abbreviated list of county by county cost figures for the 1968 and 1970 primaries. Since some counties did not report, we have made some estimations to reach the total cost figures. From this study, we have concluded that the Texas primaries cost approximately $1,[illegible]00,000 in 1970. This figure does not include the cost of the county clerks' time in holding absentee voting. It does include both Democratic and Repub-

lican primaries. The 1968 figures are incomplete, but it is estimated that the total cost did not exceed $1,600,000.

The major cost of the primaries are voting equipment and personnel. The Republican party's expenses are not representative as they do not hold primaries in all counties and they usually do not field a full slate of candidates in counties where primaries are held. Also the party gets a large amount of volunteer help which reduces its costs.

The cost of the primaries are increased by the practice of holding dual primaries. If the Republican party held primaries in all Texas counties, there would be a complete duplication of effort in every election precinct. As far as this office could determine, this situation exists in no other state. This cost in money and manpower is eliminated in all other states by holding a unitary primary. A description of a good unitary primary system will be discussed later in this report. It is enough to say that presently our primary system is costing more than necessary where both parties are holding elections in the same precincts.

## The Problems of Partisan Primary Operations

Presently the primary election operation is a completely partisan operation. This factor may well have some good points, but it is not

the optimum procedure for holding elections. Practically, partisan operation places the responsibility for policing the elections on the shoulders of the political parties. This procedure is an unnecessary burden on the parties. Presently any disagreement over the operations of the primaries automatically creates an intra-party dispute and many times causes unnecessary election contests. This problem is minimized in other states where the primaries are operated by the state and county much as the general election is operated here. For instance California, which operates its primaries with members of both parties represented, has not had an election fraud case in 25 years and election contests are few.

## Recommended Primary Procedures

The Secretary of State recommends that Texas adopt procedures making the operation of the primaries a state and county responsibility. This will allow the state and county governments to share the cost of the primaries. It will lead to a unitary primary system that will eliminate duplication and waste and it will mean basically bi-partisan operation of the elections. This should reduce election irregularities and restore the confidence of many voters in the primary election system. Most importantly it will allow the legislature to

set reasonable filing fees for all offices which will meet constitutional muster.

## Suggested Financing for Unitary System

In most states the counties bear the majority of the primary election cost. In Texas at present the counties pay all expenses of the general election. There are, of course, no filing fees for the general election in Texas so the county assumes the entire cost. In studying other states' primaries, we have found that, in some instances, the county and state share the cost for primary elections. Financing would come from the county and state general funds to be partially offset by candidate filing fees which would be paid to the state and county. Below is a hypothetical unitary primary financing structure for Travis and El Paso Counties.

In the 1970 Democratic Primary, Travis County had 42 district and county candidates on the ballot that paid the assessments. These assessments ranged from $4,860.00 for district judge to $5.00 for the State Board of Education. Total assessments collected equalled approximately $54,000.00. The actual expenses were $31,000.00. The surplus was refunded to the candidates. (The expenses for Travis

County are rather low because of the use of paper ballots.)

If filing fees were set at a maximum of $1,000.00 for district judges, $500.00 for most county offices, and $200.00 for legislative seats, the county would have received approximately $16,000.00 in filing fees. If the total fees were used to offset primary expenses, the county and state would need to supply only $15,000.00 to pay for the primaries in Travis County. (We use only Democratic figures as a unitary primary should cost approximately the same as the Democratic primary in most counties.)

El Paso County, which has a similar population to Travis County, uses voting machines. They expended $47,000.00 in the 1970 primary. Using the same filing fee schedule, they would have collected approximately $20,000.00 in fees. The county and state would have had to supply $27,000.00 to cover the cost in El Paso. In counties that use voting machines and counties with a two party organization, unitary primary cost should exceed the Democratic party primary figures by about 10%.

From these examples, it is not difficult to predict that lowered filing fees could easily contribute one-third of the primary cost in most counties. Using this figure, the 1970 primaries would have

cost the combined state and county governments approximately $1,100,000.

As stated before the counties could bear the total extra expense of the election. This would mean that El Paso County would need to budget an extra $30,000.00 every two years. Harris County would probably need to budget an extra $125,000.00 every two years. Most rural counties would find it necessary to increase budgets by only a few thousand dollars with expenses at present levels.

Studies of other states indicate that $1.00 per vote is a good average cost per election. At present, Texas elections are not costing $1.00 per vote. However, even if that figure were reached, the State's share of the election cost would not soon exceed two million dollars ($2,000,000) per general primary election.

If the state shared the expenses, it would most easily be done by reimbursing the county governments a fixed fee per voting precinct. If a figure of $100.00 per 2000 voters were used, the cost to the state every two years would be approximately $550,000. This amount would reimburse the county for approximately one-half (½) of the additional expenses of operating the primaries.

## Operational Aspects of the Unitary Primary System

The unitary primary closely resembles the general election. The election officials in each precinct are appointed by the county election board. The election judge and alternate are selected for ability and experience in holding elections. The clerks are selected from a list prepared by the respective parties. In almost every instance the holding of the election will be a bi-partisan effort. As there will be only one polling place and one set of election officials per precinct, there should be an ample supply of experienced election officials.

All voters in the same precinct will vote in the same location. If the precinct uses paper ballots, the Democratic and Republican ballots will be of different colors. The ballots, after being voted, may be placed in the same ballot box as the different color scheme will allow easy identification during counting. The voter will simply be asked in which primary he wishes to vote and he will be given the proper ballot.

In precincts using voting machines, there are two different methods of voting. In some states, each precinct has at least two machines. One machine is used for Democratic voters and the other machine for Republican voters. In California, both Democratic and Republican ballots are placed on one machine. The voter indicates

in which primary he wishes to vote and the election judge simply locks out the ballot of the other party. In this manner it is impossible to vote in the wrong primary or in both primaries. This method is much less expensive, especially if one party polls significantly fewer voters than the other party.

Tabulation of votes becomes a bit more complicated as votes for both primaries are being counted. However, this factor does not seem to create undue difficulty and can be compensated for by adding an extra clerk in precincts which have heavy turnouts in both primaries. All other aspects of the present election procedures can be retained. Party affiliation can be determined at the polls as is now done. If one party has no candidates to file in the county, the election would be held much as it is now.

## Party Financing Under a Unitary Primary System

As mentioned earlier the present primary assessments cannot be used by the parties for any purpose other than financing the primaries. This leaves the party with no funds for other operations. In many states primary filing fees are either totally or partially allocated to the respective political parties. In Alabama, for instance, the entire 2 percent (2%) fee is retained by the parties. In New Mexic

part of the primary fees are allocated to the parties and the other part is used to partially offset primary election cost. This procedure provides local county committees and state committees operating funds. Also, these funds can be allocated to the parties' candidates in the November general election. In Florida, state law requires that one-half of the primary fund be allocated to local party campaigns in the general election.

The above described system has been approved by the federal courts. It is noted here because the change in the present primary system will deprive local county committees of some operating funds.

## Cost of Unitary System

It should be obvious that the unitary primary will reduce primary election costs over the present dual primary system. The present system is relatively inexpensive only because of the absence of a complete two party primary operation and of the continued use of paper ballots in most counties. There is no doubt that an increase in voting population and continued urban growth which requires modern voting equipment such as machines or electronic voting devices is going to increase election costs. The unitary primary system is the only answer to these increasing financial problems.

Actual election cost figures from other states are not particularly helpful in determining cost as differing election procedures may result in vastly different expenditures. Studies by this office indicate that the future operational cost of a unitary primary system in Texas will not be a great burden on the state or counties. The cost figures listed in Appendix "B" give some guidance as to present election cost. The initial changeover to a unitary system could create some extra expense. It appears, however, that most precincts could convert with a minimum of expenses. Only in areas with high voter participation in both primaries would expenses increase over the present cost of Democratic primaries. Due to low voter turnout in the Republican primaries in 1968 and 1970, it would seem that these primaries could have been financed at a level near the cost of the Democratic Primary.

Statutory Changes Necessary for Unitary Primary Procedure

This office has reviewed the present statutes governing our primaries. A majority of the Articles in Chapter 13 of the present Code will require either elimination or amendment. These laws deal primarily with the organization and financing of the present primary system. A number of other statutes will require changes. This of-

fice is now in the process of identifying every statute that relates to the party primaries. If the court holds that the present system is invalid or if the legislature feels that the changes should be made in any case, this office stands ready to provide specific suggestions on amendments to change the present system.

## Conclusion

The Secretary of State believes that a change in present primary operations are needed regardless of the outcome of the court cases. Public confidence in the primary election process is imperative if our representative form of government is to continue to have the support of all the people. The present procedures simply cannot perform adequately in today's Texas, much less in the future.

## APPENDIX B

### 1968-1970 DEMOCRATIC PRIMARY ELECTION EXPENSES

| | 1968 | 1970 |
|---|---|---|
| Angelina | 8,000.00 | 6,862.00 |
| Aransas | 1,646.33 | 1,976.97 |
| Armstrong | 680.81 | 814.23 |
| Atascosa | 3,218.00 | 4,182.00 |
| Bandera | No Figures | 1,477.13 |
| Bastrop | 3,427.46 | 3,008.47 |
| Baylor | 1,584.10 | 2,450.04 |
| Bee | 7,246.36 | 4,836.19 |
| Bell | 13,297.60 | 10,372.94 |
| Bexar | 101,447.15 | 122,388.16 |
| Borden | 1,680.72 | 1,121.92 |
| Brazoria | 11,423.48 | 12,617.00 |
| Brazos | 7,749.38 | 6,634.67 |
| Burnet | 1,938.00 | 1,344.00 |
| Calhoun | 4,190.89 | 2,893.91 |
| Callahan | No Figures | 2,322.77 |
| Camp | 3,017.45 | 4,357.17 |
| Cass | 5,052.39 | 5,091.80 |
| Castro | No Figures | 1,132.47 |
| Childress | 1,272.70 | No Figures |
| Coke | No Figures | 1,083.25 |
| Collin | 9,730.03 | 10,687.40 |
| Collingsworth | 1,958.34 | 1,832.79 |
| Colorado | 3,900.33 | 3,124.89 |
| Comal | 3,100.31 | 3,809.80 |
| Comanche | 3,633.04 | 2,998.19 |
| Cooke | 5,427.06 | 7,571.17 |
| Coryell | No Figures | 2,230.59 |
| Cottle | No Figures | 1,621.69 |
| Crane | 1,825.35 | 1,463.67 |
| Crockett | 1,148.87 | 616.98 |
| Dallas | 115,793.20 | 158,867.03 |
| Dawson | No Figures | 2,404.71 |
| Denton | 8,898.75 | 9,518.15 |
| Dickens | 1,294.75 | 1,746.01 |
| Dimmit | 1,194.04 | 1,177.98 |
| Donley | 1,621.65 | 1,287.36 |
| Duval | 3,188.01 | 3,231.04 |
| Ellis | 7,620.45 | 8,280.53 |
| Falls | No Figures | 2,935.29 |
| Fannin | 4,078.00 | 5,046.00 |
| Fayette | 3,359.27 | 2,326.97 |
| Foard | 1,438.27 | 852.11 |
| Fort Bend | 6,817.88 | 5,990.53 |
| Franklin | 3,616.12 | 2,505.74 |
| Freestone | 2,992.04 | 3,415.09 |

| | 1968 | 1970 |
|---|---|---|
| Galveston | 26,610.38 | 24,578.62 |
| Garza | 1,809.46 | 2,165.25 |
| Gonzales | 2,075.00 | 2,464.00 |
| Gray | 3,500.00 | 3,528.41 |
| Grayson | 20,010.00 | 21,537.61 |
| Grimes | No Figures | 1,929.31 |
| Guadalupe | 2,580.05 | 1,979.08 |
| Hale | 2,796.47 | 3,225.37 |
| Hall | 1,849.92 | 986.97 |
| Hardeman | 1,403.48 | 1,288.59 |
| Hardin | No Figures | 12,400.00 |
| Harris | 173,848.00 | 162,000.00 |
| Hartley | 1,108.00 | 1,126.00 |
| Henderson | 3,815.13 | 4,537.04 |
| Hill | 6,010.43 | 7,425.00 |
| Hockley | 3,787.48 | 2,422.48 |
| Hudspeth | 1,439.00 | 1,550.87 |
| Hutchinson | 5,953.61 | 6,040.35 |
| Jackson | No Figures | 6,040.52 |
| Jasper | 5,247.81 | 4,266.47 |
| Jeff Davis | 627.75 | 560.33 |
| Jim Hogg | 5,779.66 | 9,301.95 |
| Jim Wells | 5,497.68 | 7,979.31 |
| Jones | 2,772.14 | 1,899.11 |
| Karnes | 4,879.65 | 3,146.82 |
| Kaufman | 4,087.97 | 5,341.83 |
| Kenedy | 441.63 | 274.64 |
| Kerr | 3,534.94 | 3,448.44 |
| Kimble | 655.18 | 932.20 |
| King | No Figures | 550.33 |
| Knox | 2,552.30 | 2,117.83 |
| Lamb | 3,861.17 | 2,101.16 |
| Lampasas | 1,608.00 | 1,957.00 |
| LaSalle | 1,325.62 | 1,538.98 |
| Lavaca | 2,447.80 | 2,860.89 |
| Lee | 3,491.88 | 2,649.15 |
| Liberty | 7,352.18 | 6,314.30 |
| Limestone | 2,725.90 | 2,102.36 |
| Lipscomb | 870.32 | 913.28 |
| Live Oak | 3,577.16 | 2,060.71 |
| Lubbock | 17,158.36 | 11,315.26 |
| Lynn | No Figures | 1,300.09 |
| Marion | No Figures | 2,300.00 |
| Mason | No Figures | 1,164.24 |
| Maverick | 4,491.52 | 5,382.00 |
| McCulloch | 2,116.96 | 2,117.95 |

| | 1968 | 1970 |
|---|---|---|
| McLennan | 13,546.04 | 13,574.26 |
| Menard | 921.30 | 1,694.18 |
| Milam | 6,686.66 | 3,925.86 |
| Mills | 2,100.00 | 977.52 |
| Mitchell | No Figures | 2,690.46 |
| Montague | 3,588.34 | 3,180.27 |
| Montgomery | 3,577.16 | 2,060.71 |
| Moore | 4,727.73 | 4,141.43 |
| Morris | No Figures | 2,082.16 |
| Motley | 479.25 | 464.25 |
| Nueces | 34,600.00 | 39,900.00 |
| Ochiltree | 1,242.98 | 1,470.00 |
| Oldham | 712.75 | 996.78 |
| Parker | 4,677.56 | 4,393.77 |
| Parmer | 1,788.30 | 1,508.15 |
| Rains | 1,056.81 | 987.22 |
| Randall | 4,587.57 | 3,972.09 |
| Reagan | No Figures | 1,598.66 |
| Real | 1,165.00 | 475.00 |
| Red River | 4,200.00 | 3,158.00 |
| Robertson | 4,828.96 | 5,154.65 |
| Rockwall | 2,099.11 | 1,855.76 |
| Runnels | No Figures | 2,041.72 |
| Rusk | 7,348.49 | 7,074.55 |
| Sabine | 3,297.29 | 3,719.05 |
| San Augustine | 3,461.84 | 2,747.11 |
| San Jacinto | 2,856.66 | 2,408.75 |
| San Saba | 2,634.88 | 1,121.21 |
| Shackelford | 1,041.62 | 1,197.65 |
| Smith | 10,457.94 | 13,598.03 |
| Somerville | No Figures | 698.47 |
| Sterling | 868.00 | 740.00 |
| Sutton | 457.28 | 381.84 |
| Tarrant | 61,825.41 | 92,470.43 |
| Taylor | 9,475.00 | 5,295.51 |
| Terry | 4,358.33 | 3,780.08 |
| Throckmorton | 1,890.87 | 1,700.34 |
| Tom Green | No Figures | 6,425.76 |
| Travis | No Figures | 30,866.93 |
| Tyler | 4,482.36 | 4,412.41 |
| Upshur | No Figures | 7,507.10 |
| Upton | 2,037.11 | 2,491.62 |
| Uvalde | 3,716.19 | 2,502.15 |
| Val Verde | 3,444.83 | 5,496.09 |
| Waller | 4,011.42 | 3,549.60 |

| | 1968 | 1970 |
|---|---|---|
| Ward | 4,950.00 | 4,556.69 |
| Washington | 2,000.00 | 1,700.00 |
| Wheeler | No Figures | 2,297.00 |
| Wichita | 10,587.76 | 8,420.95 |
| Wilbarger | 4,280.48 | 5,141.54 |
| Williamson | 5,246.98 | 4,639.98 |
| Wilson | 3,890.09 | 3,109.01 |
| Winkler | 2,444.20 | 2,936.98 |
| Wise | No Figures | 2,718.17 |
| Yoakum | 2,216.33 | 2,020.13 |
| Young | 3,070.08 | 1,638.89 |
| Zapata | No Figures | 2,183.82 |

# Election Crimp Due

## *County Growth Puts Ceiling on Filing Fees*

By TOM JOHNSON

Dallas County's preliminary 1970 census figure of more than a million people could well put a serious crimp in future primary elections, at least as far as money goes.

State law specifies limits for filing fees which can be assessed candidates by political parties in counties of more than 1,000,000 population — currently only Harris (Houston) and Dallas.

This means, paradoxically, that Dallas County political parties in 1972 primaries will be prohibited from collecting assessments as large as they could have been this year.

Dallas County's 1960 census mark of 951,000 put it in a statutory category in which there were no limits on filing fees which could be charged.

Now, though, by virtue of eclipsing the million figure an upper limit will be clamped on such fees.

"WE JUST CAN'T finance elections in Dallas County as we have in the past on such a system," said Democratic County Chairman Earl Luna.

The Legislature has set fixed filing fees for all legislative and statewide offices.

But this year, for example, in Dallas County, other Democratic candidates were assessed filing fees of 6 per cent of the total salary of the offices they sought.

In the case of a district judgeship, a 4-year term with an annual salary of $28,000, the Democratic fee was $6,720.

For the U.S. House of Representatives, a 2-year office with annual salary of $42,500, Democratic candidates had to put up $5,100 to get their names on the ballot.

The statutory limitation for counties over a million breaks down like this:

— For 4-year terms, filing fees cannot exceed 15 per cent of one year's salary of the office.

— For 2-year terms, fees cannot exceed 10 per cent of one year's salary.

PERHAPS SIGNIFICANTLY, the Republican party of Dallas County this year charged filing fees exactly in line with the million-plus limitation.

But Luna pointed out that the Democratic party would have collected $42,500 less in fees this year from 17 district-level judgeship candidates alone had the new limitation been in effect.

Luna estimates that both Democratic primaries this spring cost the county party about $156,000, so a slash incurred by the loss in fees from just the judgeships would be quite severe.

Maximum filing fees in Dallas County under the law as it now stands would allow parties to collect $4,200 from 4-year judgeships and $4,250 from congressional candidates.

Both figures are significantly below what the Democrats have been charging such candidates.

With inflation pushing up the cost of leasing voting machines and paying salaries for election workers already, what will the million population limitation mean to Dallas Democrats?

"WE CAN DO ONE of three or four things, as I see it," Luna said in an interview.

"We can try to get the Legislature to amend the statutes so that there would be no limit on what we can assess.

"If the Legislature does nothing in this regard," Luna went on, "we'll have to either cut the pay (currently $2 an hour) of election workers, recruit volunteer workers or simply put out our hand and ask the public for donations."

He said the cost of salaries for election workers was by far the single largest cost of holding Democratic primary elections here, with the cost of renting voting machines the second costliest item.

But if Harris County has been living with the limitation, why can't Dallas?

"Well," Luna said, "Harris County had to do some of the things I was talking about this year. They cut salary for election workers back to $1.50 an hour and had to use some volunteers to make ends meet."

GOP COUNTY CHAIRMAN Tom Crouch has less of a headache with primaries than Luna because the Republicans traditionally field fewer candidates and fewer voters participate in the GOP primary.

"All our election workers right now are volunteers, they work on a free basis," Crouch said, adding that this spring's GOP primary cost in the neighborhood of $50,000.

"If you know you're going to have only about 150 people voting on election day, it's not too hard to get volunteers. A lot of them are women who know they'll be able to keep on with their knitting while they're conducting the election.

"But it becomes a much more difficult job if you know and they know that 1,000 people will vote, and the workers will have to put in a hard, 15-hour day," Crouch said.

Both county chairmen agreed that lowering the voting age to 18 would add to their problems, in that it's a general rule that elections get more expensive in proportion to the number of people who vote.

COUNTY TAX ASSESSOR-Collector Ben Gentle predicted last week that lowering the voting age could swell the number of eligible voters in the county by perhaps 100,000.

President Nixon has reportedly not yet decided whether to sign a bill on his desk that would lower the voting age to 18. The Texas Constitution holds that no person under 21 can vote.

Luna said the natural population increase projected for Dallas County will make the voting lists get longer and longer, regardless of the voting age situation.

He said the number of voting precincts in the county will continue to increase as certain precincts get over-populated.

The Texas Election Code says county commissioners must keep redrawing precinct lines every four years so that no precinct contains more than 2,000 voters (3,000 if machines are used).

# APPENDIX "C"

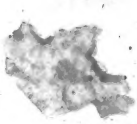
## FROM: MARTIN DIES, JR., SECRETARY OF STATE OF THE STATE OF TEXAS

## TEXAS OFFICIAL VOTE FOR GOVERNOR

## GENERAL ELECTION - NOVEMBER 3, 1970

| COUNTIES | Democratic | Republican | Others |
|---|---|---|---|
| | PRESTON SMITH | PAUL EGGERS | |
| Anderson | 3,553 | 2,537 | |
| Andrews | 1,419 | 1,030 | |
| Angelina | 6,596 | 3,775 | 14 |
| Aransas | 904 | 799 | 1 |
| Archer | 1,284 | 569 | |
| Armstrong | 448 | 308 | |
| Atascosa | 2,385 | 1,078 | |
| Austin | 1,856 | 1,464 | 1 |
| Bailey | 1,028 | 735 | |
| Bandera | 1,017 | 720 | 5 |
| Bastrop | 2,405 | 1,224 | |
| Baylor | 1,249 | 514 | |
| Bee | 2,383 | 1,964 | |
| Bell | 9,091 | 4,846 | |
| Bexar | 80,786 | 57,927 | |
| Blanco | 646 | 448 | |
| Borden | 213 | 103 | |
| Bosque | 1,950 | 1,090 | |
| Bowie | 7,532 | 4,289 | 4 |
| Brazoria | 12,250 | 11,014 | 6 |
| Brazos | 5,373 | 5,938 | 11 |
| Brewster | 1,102 | 649 | 3 |
| Briscoe | 520 | 522 | 1 |
| Brooks | 1,768 | 695 | |
| Brown | 3,464 | 1,966 | |
| Burleson | 1,876 | 581 | |
| Burnet | 1,997 | 1,428 | |
| Caldwell | 2,412 | 1,085 | 1 |
| Calhoun | 2,075 | 1,371 | |
| Callahan | 1,552 | 638 | 2 |
| Cameron | 12,415 | 9,610 | 2 |
| Camp | 1,434 | 581 | |

| | | | |
|---|---|---|---|
| Carson | 1,224 | 929 | |
| Cass | 3,747 | 1,447 | |
| Castro | 1,401 | 606 | |
| Chambers | 1,491 | 957 | 10 |
| Cherokee | 3,963 | 2,126 | 2 |
| Childress | 1,482 | 730 | |
| Clay | 1,722 | 865 | |
| Cochran | 763 | 284 | |
| Coke | 710 | 212 | |
| Coleman | 1,739 | 843 | 1 |
| Collin | 6,829 | 5,962 | |
| Collingsworth | 937 | 439 | |
| Colorado | 1,986 | 1,666 | |
| Comal | 2,444 | 2,860 | 6 |
| Comanche | 2,147 | 955 | 3 |
| Concho | 551 | 242 | |
| Cooke | 3,017 | 2,442 | |
| Coryell | 3,303 | 1,301 | |
| Cottle | 932 | 214 | |
| Crane | 893 | 427 | 17 |
| Crockett | 510 | 312 | |
| Crosby | 1,669 | 353 | 1 |
| Culberson | 396 | 282 | 1 |
| Dallam | 716 | 675 | |
| Dallas | 111,000 | 150,830 | 32 |
| Dawson | 2,166 | 1,115 | |
| Deaf Smith | 1,882 | 1,380 | |
| Delta | 1,087 | 261 | |
| Denton | 6,854 | 7,332 | 3 |
| Dewitt | 2,051 | 1,719 | |
| Dickens | 984 | 221 | |
| Dimmit | 1,149 | 527 | 2 |
| Donley | 823 | 554 | |
| Duval | 3,434 | 272 | |
| Eastland | 3,084 | 1,701 | |
| Ector | 8,966 | 7,210 | |
| Edwards | 306 | 148 | |



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|---|---|---|---|
| Ellis | 5,239 | 3,092 | |
| El Paso | 27,315 | 22,547 | 8 |
| Erath | 2,811 | 1,709 | 3 |
| Falls | 2,314 | 1,618 | |
| Fannin | 4,020 | 1,283 | |
| Fayette | 2,615 | 2,001 | |
| Fisher | 1,303 | 314 | |
| Floyd | 1,838 | 774 | |
| Foard | 554 | 154 | |
| Fort Bend | 4,723 | 4,049 | |
| Franklin | 1,157 | 304 | 1 |
| Freestone | 1,911 | 894 | |
| Frio | 1,136 | 532 | 2 |
| Gaines | 1,615 | 633 | |
| Galveston | 19,517 | 16,641 | 1 |
| Garza | 877 | 451 | |
| Gillespie | 1,201 | 1,724 | 6 |
| Glasscock | 193 | 114 | |
| Goliad | 700 | 510 | |
| Gonzales | 2,143 | 897 | 2 |
| Gray | 3,349 | 4,559 | |
| Grayson | 9,895 | 6,172 | |
| Gregg | 6,149 | 9,518 | |
| Grimes | 1,541 | 973 | |
| Guadalupe | 3,792 | 3,628 | |
| Hale | 4,389 | 2,656 | |
| Hall | 1,215 | 466 | |
| Hamilton | 1,264 | 755 | |
| Hansford | 660 | 854 | |
| Hardeman | 1,305 | 587 | |
| Hardin | 3,810 | 2,119 | |
| Harris | 152,772 | 205,574 | |
| Harrison | 5,800 | 4,303 | |
| Hartley | 474 | 425 | 1 |
| Haskell | 1,954 | 400 | |
| Hays | 2,614 | 2,065 | |
| Hemphill | 529 | 527 | |

| | | | |
|---|---|---|---|
| Henderson | 3,558 | 2,187 | |
| Hidalgo | 17,154 | 12,588 | |
| Hill | 3,379 | 1,473 | |
| Hockley | 3,015 | 1,304 | |
| Hood | 1,141 | 412 | |
| Hopkins | 3,291 | 1,374 | |
| Houston | 3,169 | 1,298 | |
| Howard | 4,196 | 2,928 | |
| Hudspeth | 438 | 156 | |
| Hunt | 5,653 | 3,827 | |
| Hutchinson | 3,120 | 3,837 | 9 |
| Irion | 210 | 137 | |
| Jack | 1,283 | 778 | |
| Jackson | 1,997 | 1,250 | |
| Jasper | 2,613 | 1,644 | 9 |
| Jeff Davis | 245 | 137 | |
| Jefferson | 27,504 | 25,377 | 3 |
| Jim Hogg | 1,003 | 411 | |
| Jim Wells | 4,254 | 2,518 | |
| Johnson | 5,034 | 3,902 | |
| Jones | 2,472 | 864 | |
| Karnes | 2,109 | 887 | |
| Kaufman | 3,722 | 1,935 | 5 |
| Kendall | 745 | 1,244 | |
| Kenedy | 120 | 36 | |
| Kent | 414 | 92 | 3 |
| Kerr | 2,489 | 2,859 | 35 |
| Kimble | 741 | 306 | |
| King | 134 | 37 | |
| Kinney | 466 | 131 | |
| Kleberg | 3,217 | 2,505 | |
| Knox | 1,432 | 327 | |
| Lamar | 5,081 | 2,461 | |
| Lamb | 2,609 | 1,489 | 2 |
| Lampasas | 1,347 | 639 | |
| Lasalle | 902 | 256 | |
| Lavaca | 2,390 | 1,315 | |

| | | | |
|---|---|---|---|
| Lee | 1,292 | 750 | |
| Leon | 1,647 | 511 | |
| Liberty | 3,762 | 2,329 | |
| Limestone | 2,882 | 1,174 | |
| Lipscomb | 631 | 734 | |
| Live Oak | 1,276 | 668 | |
| Llano | 1,284 | 1,044 | |
| Loving | 43 | 23 | |
| Lubbock | 23,614 | 10,875 | 2 |
| Lynn | 1,448 | 486 | |
| Madison | 1,040 | 595 | |
| Marion | 1,139 | 633 | |
| Martin | 694 | 259 | |
| Mason | 597 | 566 | |
| Matagorda | 3,403 | 2,381 | 1 |
| Maverick | 1,339 | 475 | |
| McCulloch | 1,444 | 607 | |
| McLennan | 20,528 | 12,599 | 18 |
| McMullen | 229 | 132 | |
| Medina | 2,183 | 1,399 | |
| Menard | 541 | 295 | |
| Midland | 6,892 | 9,584 | 2 |
| Milam | 3,149 | 1,313 | 1 |
| Mills | 775 | 389 | |
| Mitchell | 1,514 | 496 | |
| Montague | 2,575 | 1,669 | |
| Montgomery | 5,629 | 5,316 | 29 |
| Moore | 1,835 | 1,675 | |
| Morris | 2,020 | 815 | 2 |
| Motley | 560 | 241 | |
| Nacogdoches | 3,994 | 2,436 | 1 |
| Navarro | 4,884 | 2,283 | |
| Newton | 1,681 | 635 | 2 |
| Nolan | 2,756 | 1,134 | |
| Nueces | 22,140 | 18,395 | 6 |
| Ochiltree | 1,050 | 1,284 | |
| Oldham | 383 | 249 | |

| | | | |
|---|---|---|---|
| Orange | 7,613 | 6,159 | |
| Palo Pinto | 3,804 | 2,111 | |
| Panola | 2,565 | 1,377 | |
| Parker | 4,482 | 3,168 | |
| Parmer | 1,381 | 796 | |
| Pecos | 1,868 | 1,000 | 4 |
| Polk | 2,180 | 850 | 2 |
| Potter | 8,610 | 9,615 | 6 |
| Presidio | 1,127 | 323 | |
| Rains | 691 | 288 | 2 |
| Randall | 6,072 | 8,006 | 15 |
| Reagan | 539 | 290 | |
| Real | 232 | 169 | |
| Red River | 2,953 | 853 | |
| Reeves | 1,627 | 797 | |
| Refugio | 1,308 | 785 | |
| Roberts | 219 | 258 | |
| Robertson | 2,686 | 860 | |
| Rockwall | 1,218 | 642 | 6 |
| Runnels | 1,719 | 1,023 | |
| Rusk | 4,180 | 3,601 | |
| Sabine | 1,375 | 462 | |
| San Augustine | 1,042 | 371 | |
| San Jacinto | 992 | 406 | |
| San Patricio | 4,979 | 3,028 | |
| San Saba | 1,085 | 390 | |
| Schleicher | 426 | 281 | 1 |
| Scurry | 2,486 | 1,152 | |
| Shackleford | 688 | 381 | |
| Shelby | 3,099 | 938 | 1 |
| Sherman | 388 | 452 | |
| Smith | 9,726 | 12,507 | |
| Somervell | 448 | 188 | |
| Starr | 3,310 | 2,184 | |
| Stephens | 1,349 | 840 | |
| Sterling | 223 | 83 | |
| Stonewall | 758 | 146 | |

| | | | |
|---|---|---|---|
| Sutton | 377 | 216 | |
| Swisher | 1,879 | 604 | |
| Tarrant | 62,117 | 72,706 | |
| Tyaler | 10,278 | 7,235 | 24 |
| Terrell | 246 | 162 | |
| Terry | 2,029 | 931 | |
| Throckmorton | 646 | 266 | |
| Titus | 2,922 | 1,053 | |
| Tom Green | 7,652 | 6,266 | 1 |
| Travis | 34,933 | 34,244 | |
| Trinity | 1,179 | 595 | |
| Tyler | 1,798 | 1,193 | |
| Upshur | 3,238 | 1,856 | 5 |
| Upton | 718 | 544 | |
| Uvalde | 1,985 | 1,377 | |
| Val Verde | 2,819 | 1,274 | |
| Van Zandt | 3,080 | 1,657 | |
| Victoria | 6,061 | 4,912 | 2 |
| Walker | 2,426 | 1,661 | |
| Waller | 1,579 | 800 | |
| Ward | 1,971 | 1,158 | 24 |
| Washington | 2,410 | 1,794 | |
| Webb | 6,952 | 2,275 | |
| Wharton | 3,938 | 2,989 | |
| Wheeler | 1,060 | 816 | |
| Wichita | 16,264 | 11,231 | 3 |
| Wilbarger | 2,764 | 1,251 | 1 |
| Willacy | 1,964 | 981 | |
| Williamson | 4,594 | 2,228 | 6 |
| Wilson | 2,135 | 843 | |
| Winkler | 1,716 | 1,190 | |
| Wise | 2,842 | 1,622 | |
| Wood | 2,761 | 1,869 | 3 |
| Yoakum | 1,123 | 579 | |
| Young | 2,714 | 1,428 | |
| Zapata | 745 | 392 | |
| Zavala | 1,123 | 472 | |
| Grand Totals | 1,197,726 | 1,037,723 | 398 |

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971

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No. 70- 128

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MARTIN DIES, JR., ET AL.,
Appellants

vs.

VAN PHILLIP CARTER, ET AL.,
Appellees

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On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

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# SUPPLEMENTAL BRIEF FOR THE APPELLEES.

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No. 70-128

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

---

MARTIN DIES, JR., et al.,

Appellants

vs.

VAN PHILLIP CARTER, et al.,

Appellees

---

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

---

# SUPPLEMENTAL BRIEF FOR THE APPELLEES

---

The Appellees' herein respectfully present late authorities not available in time to have been included in their brief in chief.

The recent opinion of Judge Albert C. Wollenberg, unpublished to date, in WONG v. MIHALY, case No. C- 71- 1771 ACW ( N. D. Calif. September 17, 1971 ) held San Francisco charter requirement that any candidate who desires to run for municipal office must pay a filing fee of two percent of the current annual salary of the position he seeks unconstitutional as

violative of the equal protection clause of the Fourteenth Amendment. Wong was unable to pay a filing fee of $192.00 while another plaintiff in the WONG case was unable to pay a filing fee of $832.00. Judge Wollenberg wrote in WONG that:

> " The decision of the Supreme Court have made clear beyond a doubt that the right to vote is regarded as a most fundamental right, upon which much in our governmental system is based. [Citation omitted]. The right to run for office must be similarly regarded if the right to vote is to be assured of content. Williams v. Rhodes, 393 U.S. 23 (1968 ); see Gangemi v. Rosengard, 44 N.J. 166, 207A 2d. 665 ( 1965 ). On the other hand, government classifications found upon wealth or the lack of it are regarded as highly suspect. [Citation omitted ]."
>
> " The significance of weighing a right deemed 'fundamental' against a government interest to determine whether a 'suspect classification' constitutes invidious discrimination lies in the nature of the test to be applied. While in many instances a governmental classification will be upheld upon a finding of a rational relation between the classification and the interest sought to be advanced, in cases of either 'fundamental rights' or 'suspect classifications' the classification fails

unless a 'compelling state interest' is found to require it. Shapiro v. Thompson, 394 U.S. 618, 634 (1969); Reynolds v. Sims, 377 U.S. 533 (1964)."

In the case at bar the filing fee requirements in Texas primary elections are governmental classifications based upon both wealth and the lack of wealth and are regarded as "suspect classifications" for constitutional purposes. Furthermore, the right to vote and the right to run for office either in a general or primary election are "fundamental rights". Therefore, the Texas classification of candidates and voters upon wealth in primary elections must fail unless a "compelling state interest" is found.

The portion of the Charter of the City of Houston that required a $500.00 filing fee for city councilman was held unconstitutional as violative of the First and Fourteenth Amendments in DUNCANTELL v CITY OF HOUSTON, Civil Action No. 71-H-1035 ( S.D. Tex. October 27, 1971 ) unpublished to date. Judge John V. Singleton, Jr., tells in the DUNCANTELL case that:

" This Court does not question the validity of applying the 'compelling interest' criteria to the City's enactment of the two articles at issue. This is especially true since the activity to be protected from the consequences of the classification based on wealth embodies a fundamental interest, deserving of special

protection by the federal courts."

" Voting and its concomitant, running for office, are certainly basic First Amendment rights to be protected. [ Citation omitted]. Secondly, the 'compelling interest' test should be applied because the type of persons harmed by this classification are also deserving of protection by the courts. Comment, ' Developments in the Law-Equal Protection,' 82 Har. L. Rev. 1065, 1120-1122 ( 1969 ) ."

" The right to vote is a right which is at the heart of our system of government. Likewise, the right to run or be a candidate is inextricably woven into the fabric of the First Amendment. Consequently, any abridgment of that right must receive careful judicial scrutiny and the state or city has the burden of justifying through proof of a compelling interest any restraints on these precious rights. Lacking such proof, any restrictions on or impediments to these rights cannot meet constitutional standards." Emphasis added. [Citations omitted].

" The opportunity to vote for a certain candidate in an election is sufficiently important to be as 'fundamental' as the basic right to vote upheld in Kramer v. Union School District, 395 U.S. 621 ( 1968 ). "

Judge Singleton was right when he wrote that " the right to seek public office is as fundamental in our governmental process as the right to vote" and " the ability to either have or to be able to raise any sum of money as the sole prerequisite to seeking public office is an unreasonable burden or restraint and thereby violative of the First and Fourteenth Amendments to our Constitution." Emphasis added.

The filing fee requirement for a mayoral candidate in Houston City election in the amount of $1,250.00 and the fee of $500.00 for councilman candidate was held unconstitutional by Judge Carl O. Bue, Jr. in The Socialist Worker Party v. Mayor Louie Welch, S.D. Texas, Civil Action No. 71-H-462 ( S.D. Tex. October 27, 1971 ) unpublished to date. Judge Bue applied the compelling interest test in his 14 page memorandum and order, and said that the distinctions between voters and candidates are minimal in importance as the "rights of each are so closely related to and affected by the other".

In CONNERTON v OLIVER, C.A. No. 71-H-330 ( S.D. Tex. March 29, 1971) Judge Allan B. Hannay in an unpublished opinion held that a real property ownership qualification in a City Election to be unconstitutional as violative of the equal protection clause of the Fourteenth Amendment. Judge Hannay's opinion was followed by Judges Bue and Singleton in regard to the Houston real property ownership qualification or classification of candidates. See also GONZALEZ v CITY OF SINTON, TEX.

319 F.Supp. 189 ( S. D. Tex. 1970 );STAPLETON v. CLERK FOR THE CITY OF INKSTER, 311 F.Supp. 1187 ( E.D.Mich. 1970 ); PUENTE v. CITY OF CRYSTAL CITY, TEXAS, Civil Action No. DR-70-CA-4 ( W.D. Tex. April 3, 1970 ) unpublished opinion by Judge Dorwin W. Suttle holding real property ownership requirement as an invidious discrimination disqualification for a candidate in a city election.

In the CONNERTON case, Judge Hannay wrote " that many if not all of the principles which render voting restrictions constitutionally infirm are in addition equally applicable to qualifications for candidacy" .

## CONCLUSION

It is respectfully submitted that the three-judge district court below was correct in its conclusion that Texas Election Code Scheme for financing Primary Elections violated the First and Fourteenth Amendments and the judgment below should be affirmed. Furthermore, the new Texas legislation on primary elections ( H.B. 5, Texas Brief pp. 33-42 ) violates the First and Fourteenth Amendments and to that end we urge this Court to declare said Texas enactment unconstitutional.

Respectfully submitted,

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PROOF OF SERVICE

We, Joseph A. Calamia and John L. Fashing, two of the attorneys for the Appellees Pate and Guzman, et al, herein, and both members of the Bar of the Supreme Court of the United States, do hereby certify that on the 9th day of November, 1971, we served copies of the foregoing Supplemental Brief for Appellees on the following attorneys of record for the Appellants, to wit: Pat Bailey, Asst. Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711; Charles F. Herring and John F. Morehead, 906 Perry Brooks Bldg., Austin, Texas 78701; Estil Vance, Jr. 1800 First National Bank Building, Fort Worth, Texas 76102; Mark F. Howell

508 Southwest National Bank Building, El Paso, Texas 79901, by Air Mail and First Class postage, prepaid.

Joseph A. Calamia

John L. Fashing

# BULLOCK ET AL. *v.* CARTER ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

No. 70–128. Argued November 17, 1971—Decided February 24, 1972

Appellees who sought to become candidates for local office in the Texas Democratic primary election challenged in the District Court the validity of the Texas statutory scheme which, without write-in or other alternative provisions, requires payment of fees ranging as high as $8,900. Appellees claimed that they were unable to pay the required fees and were therefore barred from running. Under the Texas statute the party committee estimates the total cost of the primary and apportions it among candidates according to its judgment of what is "just and equitable," in light of "the importance, emolument, and term of office." The fees for local candidates tend appreciably to exceed those for statewide candidates. Following a hearing, the District Court declared the fee system invalid and enjoined its enforcement. Appellants contend that the filing fees are necessary both to regulate the primary ballot and to finance elections. *Held:* The Texas primary election filing-fee system contravenes the Equal Protection Clause of the Fourteenth Amendment. Pp. 140–149.

(a) Since the Texas statute imposes filing fees of such magnitude that numerous qualified candidates are precluded from filing, it falls with unequal weight on candidates and voters according to their ability to pay the fees, and therefore it must be "closely scrutinized" and can be sustained only if it is reasonably necessary to accomplish a legitimate state objective and not merely because it has some rational basis. Pp. 140–144.

(b) Although a State has an interest in regulating the number of candidates on the ballot and eliminating those who are spurious, it cannot attain these objectives by arbitrary means such as those called for by the Texas statute, which eliminates legitimate potential candidates, like those involved here, who cannot afford the filing fees. Pp. 144–147.

(c) The apportionment of costs among candidates is not the only means available to finance primary elections, and the State can identify certain bodies as political parties entitled to sponsorship if the State itself finances the primaries, as it does general

elections, both of which are important parts of the democratic process. Pp. 147–149.

321 F. Supp. 1358, affirmed.

BURGER, C. J., delivered the opinion of the Court, in which all members joined except POWELL and REHNQUIST, JJ., who took no part in the consideration or decision of the case.

*John F. Morehead*, Special Assistant Attorney General of Texas, and *Pat Bailey*, Assistant Attorney General, argued the cause for appellants. With them on the brief were *Crawford C. Martin*, Attorney General, *Nola White*, First Assistant Attorney General, *Alfred Walker*, Executive Assistant Attorney General, *J. C. Davis*, *William J. Craig*, and *W. O. Shultz II*, Assistant Attorneys General, and *Charles F. Herring*.

*A. L. Crouch* argued the cause for appellees Wischkaemper et al. With him on the brief was *Eugene L. Smith* for appellee Carter. *Joseph A. Calamia* argued the cause for appellees Pate et al. With him on the briefs was *John L. Fashing*.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Under Texas law, a candidate must pay a filing fee as a condition to having his name placed on the ballot in a primary election.[1] The constitutionality of the Texas filing-fee system is the subject of this appeal from the judgment of a three-judge District Court.

Appellee Pate met all qualifications to be a candidate in the May 2, 1970, Democratic primary for the office of County Commissioner of Precinct Four for El Paso County, except that he was unable to pay the $1,424.60 assessment required of candidates in that pri-

[1] See Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 of the Texas Election Code Ann. (Supp. 1970–1971).

mary. Appellee Wischkaemper sought to be placed on the Democratic primary ballot as a candidate for County Judge in Tarrant County, but he was unable to pay the $6,300 assessment for candidacy for that office. Appellee Carter wished to be a Democratic candidate for Commissioner of the General Land Office; his application was not accompanied by the required $1,000 filing fee.[2]

After being denied places on the Democratic primary ballots in their respective counties, these appellees instituted separate actions in the District Court challenging the validity of the Texas filing-fee system. Their actions were consolidated, and a three-judge District Court was convened pursuant to 28 U. S. C. §§ 2281 and 2284. Appellee Jenkins was permitted to intervene as a voter on his claimed desire to vote for Wischkaemper, and appellee Guzman and others were permitted to intervene as voters desiring to cast their ballots for Pate. On April 3, 1970, the District Court ordered that Wischkaemper and Pate be permitted to participate in the primary conducted on May 2, 1970, without prepayment of filing fees.[3] Following a hearing on the merits, the three-judge court declared the Texas filing fee scheme unconstitutional and enjoined its enforcement.[4] 321 F. Supp. 1358 (ND Tex. 1970). A direct

[2] Carter also failed to have his application notarized and to have it accompanied by a statutory loyalty affidavit. Since appellees Pate and Wischkaemper were in all respects eligible to be candidates in the primary except for their failure to pay the filing fees, Carter's participation in this appeal is superfluous and we need not decide whether the additional defects in his application deprive him of standing to attack the constitutionality of the filing-fee system.

[3] The order provided that their ultimate liability for the fees would depend on the outcome of this action. Preliminary relief was not granted to Carter because of his noncompliance with requisites for candidacy unrelated to the challenged filing fees. See n. 2, *supra*.

[4] The specific provisions held unconstitutional are those listed in n. 1, *supra*.

appeal was taken under 28 U. S. C. § 1253, and we noted probable jurisdiction. 403 U. S. 904.

Under the Texas statute, payment of the filing fee is an absolute prerequisite to a candidate's participation in a primary election. There is no alternative procedure by which a potential candidate who is unable to pay the fee can get on the primary ballot by way of petitioning voters,[5] and write-in votes are not permitted in primary elections for public office.[6] Any person who is willing and able to pay the filing fee and who meets the basic eligibility requirements for holding the office sought can run in a primary.

Candidates for most district, county, and precinct offices must pay their filing fee to the county executive committee of the political party conducting the pri-

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[5] Texas law does permit the names of independent candidates to appear on the official ballot in the general election if a proper application containing a voter petition is submitted. The number of eligible voters required to sign the petition varies from 1% to 5% depending on the office sought. For district, county, and precinct offices, candidates must obtain the signatures of 5% of the eligible voters with a ceiling of 500 signatures. No person can sign the application of more than one person for the same office, and no person who has voted in a primary can sign the application of a candidate for an office for which a nomination was made at such primary. Art. 13.50, Tex. Election Code Ann. (1967).

No fees are assessed against candidates in general elections.

[6] Art. 13.09 (b), Tex. Election Code Ann. (Supp. 1970–1971). Write-in votes are permitted for the party offices of county chairman and precinct chairman in the general primary but not in the run-off primary. *Ibid.*

Former Art. 13.08c (repealed, Acts 1967, 60th Leg., p. 1932, c. 723, § 77) permitted write-in votes in primary elections and provided that if a write-in candidate in the first primary either received a majority of the votes or was one of the two highest vote getters in a race in which no candidate received a majority of the votes, he could not be the party's nominee in the general election or participate in the run-off primary, unless and until he paid the filing fee he would have been assessed had he originally sought a place on the primary ballot.

mary; the committee also determines the amount of the fee. The party committee must make an estimate of the total cost of the primary and apportion it among the various candidates "as in their judgment is just and equitable." [7] The committee's judgment is to be guided by "the importance, emolument, and term of office for which the nomination is to be made." [8] In counties with populations of one million or more, candidates for offices of two-year terms can be assessed up to 10% of their aggregate annual salary, and candidates for offices of four-year terms can be assessed up to 15% of their aggregate annual salary.[9] In smaller counties there are no such percentage limitations.[10]

The record shows that the fees required of the candidates in this case are far from exceptional in their magnitude.[11] The size of the filing fees is plainly a

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[7] Art. 13.08, Tex. Election Code Ann. (Supp. 1970–1971).

[8] *Ibid.*

[9] Art. 13.08a, Tex. Election Code Ann. (Supp. 1970–1971). This provision is applicable to members of Congress.

[10] The $6,300 fee required of appellee Wischkaemper, for example, amounts to 32% of the $19,700 annual salary for County Judge in Tarrant County. Similarly, in the May 2, 1970, Democratic primary, candidates for five county offices in Ward County were assessed $6,250 for a filing fee; this fee represented 76.6% of the $8,160 annual salary for four of these offices; for the fifth office, that of County Commissioner, it represented 99.7% of the annual salary of $6,270.

[11] Assessments in excess of $1,000 appear to be common in many Texas counties, and assessments exceeding $5,000 are typical for certain offices in several counties. Filing fees for judgeships seem to run particularly high. Persons seeking to run in the May 2, 1970, Democratic primary for the office of District Judge in Tarrant County were required to pay $8,900 in order to have their names appear on the ballot.

It should be noted, however, that amounts not needed to finance the primary are refunded to the candidates, and that in some counties refunds tend to run as high as 50% or more of the assessed filing fee.

natural consequence of a statutory system that places the burden of financing primary elections on candidates rather than on the governmental unit, and that imposes a particularly heavy burden on candidates for local office. The filing fees required of candidates seeking nomination for state offices and offices involving statewide primaries are more closely regulated by statute and tend to be appreciably smaller. The filing fees for candidates for State Representative range from $150 to $600, depending on the population of the county from which nomination is sought.[12] Candidates for State Senator are subject to a maximum assessment of $1,000.[13]

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[12] Arts. 13.08a, 13.16 subd. 2, Tex. Election Code Ann. (Supp. 1970–1971):

| *Population of County* | *Filing Fee* |
|---|---|
| less than 650,000 | $150 |
| 650,000 to 900,000 | $600 |
| 900,000 to 1,000,000 | $300 |
| 1,000,000 or more | $500 |

It is not clear from the face of the statute why candidates from counties having populations between 650,000 and 900,000 must pay more than candidates from counties of larger sizes.

An additional provision requires that candidates for State Representative from districts encompassing either eight or nine counties must pay $25 per county as a filing fee. Art. 13.08a, Tex. Election Code Ann. (Supp. 1970–1971).

[13] Art. 13.08a, Tex. Election Code Ann. (Supp. 1970–1971). There is a fixed-fee schedule if nomination is sought from a county with a population of 650,000 or more:

| *Population of County* | *Filing Fee* |
|---|---|
| 650,000 to 900,000* | $1,000 |
| 900,000 to 1,000,000 | $ 300 |
| 1,000,000 or more | $1,000 |

*If part of such county is joined to two or more counties to constitute a senatorial district, the filing fee is fixed at $250.

There is a ceiling on the filing fee if nomination is sought in a senatorial district encompassing counties with less than 650,000 in

Candidates for nominations requiring statewide primaries, including candidates for Governor and United States Senator, must pay a filing fee of $1,000 to the chairman of the state executive committee of the party conducting the primary.[14] Candidates for the State Board of Education have a fixed filing fee of $50.[15]

(1)

The filing-fee requirement is limited to party primary elections, but the mechanism of such elections is the creature of state legislative choice and hence is "state action" within the meaning of the Fourteenth Amendment. *Gray* v. *Sanders*, 372 U. S. 368 (1963); *Nixon* v. *Herndon*, 273 U. S. 536 (1927).[16] Although we

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population. Art. 13.16 subd. 1, Tex. Election Code Ann. (Supp. 1970–1971):

| *Population of County* | *Filing Fee per County* |
|---|---|
| less than 5,000 | $ 1 |
| 5,000 to 10,000 | $ 5 |
| 10,000 to 40,000 | $ 10 |
| 40,000 to 125,000 | $ 50 |
| 125,000 to 200,000 | $ 75 |
| 200,000 to 650,000 | $100 |

Persons seeking nomination in a senatorial district constituting exactly two counties must pay a filing fee of $200.

[14] Art. 13.15, Tex. Election Code Ann. (Supp. 1970–1971). Candidates for Justice of the Court of Civil Appeals are also required to pay their filing fees to the chairman of the state committee, at the rate of 5% of one year's salary. *Ibid.*

[15] Art. 13.08 (4), Tex. Election Code Ann. (Supp. 1970–1971).

[16] Appellants ask the Court to reconsider the scope of *Smith* v. *Allwright*, 321 U. S. 649 (1944), in which the Court held that the action of the Democratic Party of Texas in excluding Negroes from participation in party primaries constituted "state action." See also *Terry* v. *Adams*, 345 U. S. 461 (1953); cf. *Nixon* v. *Condon*, 286 U. S. 73 (1932). Appellants contend that not every aspect of a party primary election must be considered "state action" cognizable under the Fourteenth Amendment. But we are here concerned with

have emphasized on numerous occasions the breadth of power enjoyed by the States in determining voter qualifications and the manner of elections, this power must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment. See, *e. g., Williams* v. *Rhodes,* 393 U. S. 23 (1968); *Evans* v. *Cornman,* 398 U. S. 419 (1970); *Carrington* v. *Rash,* 380 U. S. 89 (1965). The question presented in this case is whether a state law that prevents potential candidates for public office from seeking the nomination of their party due to their inability to pay a portion of the cost of conducting the primary election is state action that unlawfully discriminates against the candidates so excluded or the voters who wish to support them.[17]

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the constitutionality of a state law rather than action by a political party and thus have no occasion to consider the scope of the holding in *Smith* v. *Allwright, supra.*

[17] The Texas Legislature has enacted a "contingent, temporary law" modifying the filing-fee requirement involved in this case. C. 11, H. B. 5, 62d Leg., 1st Called Sess. (1971). The new provisions allow persons unable to pay the filing fees to have their names placed on the ballot in primary elections if they submit a petition

> "signed by qualified voters eligible to vote for the office for which the candidate is running, equal in number to at least 10 percent of the entire vote cast for that party's candidate for governor in the last preceding general election in the territory . . . in which the candidate is running." (Art. 13.08c (b).)

The Act provides that it is to go into effect only if "(1) the Supreme Court of the United States does not dispose of the appeal [in this case] . . . before January 1, 1972; or (2) the Supreme Court of the United States affirms or refuses to review the judgment of the district court in the aforesaid case . . ." (§ 7 (b)). The Act expires of its own force on December 31, 1972, at which time the prior law goes back into effect.

Although the Act has gone into effect due to the absence of decision by the Court on this appeal before January 1, 1972, the change in the law does not render this case moot. The effect of the "contingent,

The threshold question to be resolved is whether the filing-fee system should be sustained if it can be shown to have some rational basis,[18] or whether it must withstand a more rigid standard of review.

In *Harper* v. *Virginia Board of Elections*, 383 U. S. 663 (1966), the Court held that Virginia's imposition of an annual poll tax not exceeding $1.50 on residents over the age of 21 was a denial of equal protection. Subjecting the Virginia poll tax to close scrutiny, the Court concluded that the placing of even a minimal price on the exercise of the right to vote constituted an invidious discrimination. The problem presented by candidate filing fees is not the same, of course, and we must determine whether the strict standard of review of the *Harper* case should be applied.

The initial and direct impact of filing fees is felt by aspirants for office, rather than voters, and the Court has not heretofore attached such fundamental status to

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temporary law" enacted by the Texas Legislature is to suspend enforcement of the strict filing-fee requirement during calendar year 1972. Since enforcement of the filing-fee requirement under the prior law was permanently enjoined by the court below, that injunction would continue to have force and effect after December 31, 1972. Furthermore, there is a continuing controversy with respect to appellees' obligation to pay the filing fees for participation in the Democratic primary held on May 2, 1970. The order of the District Court allowing appellees Pate and Wischkaemper to run in the primary without payment of fees stated that they would be liable for the fees if they did not ultimately prevail in this action. See n. 3, *supra*.

We take note of the fact that in *Johnston* v. *Luna*, CA 3–5373–C (ND Tex., filed Jan. 20, 1972), the same three-judge court that issued the injunction appealed from in this case, declared the new law unconstitutional and enjoined its enforcement. Our attention is confined to the case before us, and we intimate no view on the merits of that controversy.

[18] See *Dandridge* v. *Williams*, 397 U. S. 471, 485 (1970); *McGowan* v. *Maryland*, 366 U. S. 420, 425–426 (1961).

candidacy as to invoke a rigorous standard of review.[19] However, the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters. Of course, not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review. *McDonald* v. *Board of Election*, 394 U. S. 802 (1969). Texas does not place a condition on the exercise of the right to vote,[20] nor does it quantitatively dilute votes that have been cast.[21] Rather, the Texas system creates barriers to candidate access to the primary ballot, thereby tending to limit the field of candidates from which voters might choose. The existence of such barriers does not of itself compel close scrutiny. Compare *Jenness* v. *Fortson*, 403 U. S. 431 (1971), with *Williams* v. *Rhodes*, 393 U. S. 23 (1968). In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.

Unlike a filing-fee requirement that most candidates could be expected to fulfill from their own resources or at least through modest contributions, the very size of the fees imposed under the Texas system gives it a patently exclusionary character. Many potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be and no matter how broad or enthusiastic their popular support. The effect

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[19] Cf. *Turner* v. *Fouche*, 396 U. S. 346, 362 (1970); *Snowden* v. *Hughes*, 321 U. S. 1 (1944).

[20] See *Harper* v. *Virginia Board of Elections*, 383 U. S. 663 (1966); *Kramer* v. *Union Free School Dist. No. 15*, 395 U. S. 621 (1969); *Cipriano* v. *City of Houma*, 395 U. S. 701 (1969).

[21] See *Reynolds* v. *Sims*, 377 U. S. 533, 562 (1964); *Wesberry* v. *Sanders*, 376 U. S. 1 (1964).

of this exclusionary mechanism on voters is neither incidental nor remote. Not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community, whose favorites may be unable to pay the large costs required by the Texas system. To the extent that the system requires candidates to rely on contributions from voters in order to pay the assessments, a phenomenon that can hardly be rare in light of the size of the fees, it tends to deny some voters the opportunity to vote for a candidate of their choosing; at the same time it gives the affluent the power to place on the ballot their own names or the names of persons they favor. Appellants do not dispute that this is endemic to the system. This disparity in voting power based on wealth cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause, and there are doubtless some instances of candidates representing the views of voters of modest means who are able to pay the required fee. But we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status.

Because the Texas filing-fee scheme has a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate, we conclude, as in *Harper*, that the laws must be "closely scrutinized" and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster.

(2)

Appellants contend that the filing fees required by the challenged statutes are necessary both to regulate

the ballot in primary elections and to provide a means for financing such elections.

The Court has recognized that a State has a legitimate interest in regulating the number of candidates on the ballot. *Jenness* v. *Fortson*, 403 U. S., at 442; *Williams* v. *Rhodes*, 393 U. S., at 32. In so doing, the State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections.[22] Although we have no way of gauging the number of candidates who might enter primaries in Texas if access to the ballot were unimpeded by the large filing fees in question here, we are bound to respect the legitimate objectives of the State in avoiding overcrowded ballots. Moreover, a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies. *Jenness* v. *Fortson*, 403 U. S., at 442.

There is no escape from the conclusion that the imposition of filing fees ranging as high as $8,900 tends to limit the number of candidates entering the primaries. However, even under conventional standards of review, a State cannot achieve its objectives by totally arbitrary means; the criterion for differing treatment must bear some relevance to the object of the legislation. *Morey* v. *Doud*, 354 U. S. 457, 465 (1957); *Smith* v. *Cahoon*, 283 U. S. 553, 567 (1931). To say that the filing fee requirement tends to limit the ballot to the more serious candidates is not enough. There

[22] The Texas Election Code provides that no person shall be nominated at a primary election for any office unless he receives a majority of the votes cast. In the event that no candidate receives a majority, a runoff election is held between the two candidates receiving the highest number of votes. Arts. 13.03, 13.07, Tex. Election Code Ann. (1967).

may well be some rational relationship between a candidate's willingness to pay a filing fee and the seriousness with which he takes his candidacy,[23] but the candidates in this case affirmatively alleged that they were *unable*, not simply *unwilling*, to pay the assessed fees and there was no contrary evidence. It is uncontested that the filing fees exclude legitimate as well as frivolous candidates. And even assuming that every person paying the large fees required by Texas law takes his own candidacy seriously, that does not make him a "serious candidate" in the popular sense. If the Texas fee requirement is intended to regulate the ballot by weeding out spurious candidates, it is extraordinarily ill-fitted to that goal;[24] other means to protect those valid interests are available.

Instead of arguing for the reasonableness of the exclusion of some candidates, appellants rely on the fact that the filing-fee requirement is applicable only to party primaries, and point out that a candidate can gain a place on the ballot in the general election without payment of fees by submitting a proper application accompanied by a voter petition.[25] Apart from the fact that the primary election may be more crucial than the general election in certain parts of Texas,[26] we can hardly accept as reasonable an alternative that requires

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[23] Cf. *Harper* v. *Virginia Board of Elections*, 383 U. S., at 684–685 (Harlan, J., dissenting).

[24] Cf. *Turner* v. *Fouche*, 396 U. S., at 364.

[25] Appellants state that Texas requires only the signatures of 1% of the eligible voters. Although this is true for offices voted for statewide, the candidates for local offices in this case would have had to obtain the signatures of 5% of the eligible voters up to a maximum of 500 signatures. Moreover, only those persons not voting in the primary would have been eligible to sign a nominating petition. See n. 5, *supra*.

[26] See *Carter* v. *Dies*, 321 F. Supp. 1358, 1363 (ND Tex. 1970) (Thornberry, J., concurring).

candidates and voters to abandon their party affiliations in order to avoid the burdens of the filing fees imposed by state law. Appellants have not demonstrated that their present filing-fee scheme is a necessary or reasonable tool for regulating the ballot.

In addition to the State's purported interest in regulating the ballot, the filing fees serve to relieve the State treasury of the cost of conducting the primary elections, and this is a legitimate state objective; in this limited sense it cannot be said that the fee system lacks a rational basis.[27] But under the standard of review we consider applicable to this case, there must be a showing of necessity. Appellants strenuously urge that apportioning the cost among the candidates is the only feasible means for financing the primaries. They argue that if the State must finance the primaries, it will have to determine which political bodies are "parties" so as to be entitled to state sponsorship for their nominating process, and that this will result in new claims of discrimination. Appellants seem to overlook the fact that a similar distinction is presently embodied in Texas law since only those political parties whose gubernatorial candidate received 200,000 or more votes in the last preceding general election are required to conduct primary elections.[28] Moreover, the Court has recently upheld the validity of a state law distinguishing between political parties on the basis of success in prior elections. *Jenness* v. *Fortson, supra.* We are not persuaded that Texas would be faced with an impossible task in distinguishing between political parties for the purpose of financing primaries.

We also reject the theory that since the candidates are availing themselves of the primary machinery, it

[27] Cf. *Harper* v. *Virginia Board of Elections,* 383 U. S., at 674 (Black, J., dissenting).

[28] Art. 13.02, Tex. Election Code Ann. (1967).

is appropriate that they pay that share of the cost that they have occasioned. The force of this argument is diluted by the fact that candidates for offices requiring statewide primaries are generally assessed at a lower rate than candidates for local office, although the statewide primaries undoubtedly involve a greater expense.[29] More importantly, the costs do not arise because candidates decide to enter a primary or because the parties decide to conduct one, but because the State has, as a matter of legislative choice, directed that party primaries be held. The State has presumably chosen this course more to benefit the voters than the candidates.

Appellants seem to place reliance on the self-evident fact that if the State must assume the cost, the voters, as taxpayers, will ultimately be burdened with the expense of the primaries. But it is far too late to make out a case that the party primary is such a lesser part of the democratic process that its cost must be shifted away from the taxpayers generally. The financial burden for general elections is carried by all taxpayers and appellants have not demonstrated a valid basis for distinguishing between these two legitimate costs of the democratic process. It seems appropriate that a primary system designed to give the voters some influence at the nominating stage should spread the cost among all of the voters in an attempt to distribute the influence without regard to wealth. Viewing the myriad governmental functions supported from general revenues, it is difficult to single out any of a higher order than the conduct of elections at all levels to bring

[29] This would be a different case if the fees approximated the cost of processing a candidate's application for a place on the ballot, a cost resulting from the candidate's decision to enter a primary. The term *filing* fee has long been thought to cover the cost of filing, that is, the cost of placing a particular document on the public record.

forth those persons desired by their fellow citizens to govern. Without making light of the State's interest in husbanding its revenues, we fail to see such an element of necessity in the State's present means of financing primaries as to justify the resulting incursion on the prerogatives of voters.

(3)

Since the State has failed to establish the requisite justification for this filing-fee system, we hold that it results in a denial of equal protection of the laws. It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other contexts. By requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the State of Texas has erected a system that utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice. These salient features of the Texas system are critical to our determination of constitutional invalidity.

*Affirmed.*

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.